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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1959~~ 1960 1961

No. ~~326~~ 52

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, APPELLANT,

vs.

EGAN, GOVERNOR OF ALASKA, ET AL.

No. ~~327~~ 63

ORGANIZED VILLAGE OF KAKE, ET AL., APPELLANTS,

vs.

EGAN, GOVERNOR OF ALASKA.

APPEALS FROM THE DISTRICT COURT OF THE STATE OF ALASKA

FILED AUGUST 20, 1959

JURISDICTION POSTPONED DECEMBER 7, 1959

Supreme Court of the United States

OCTOBER TERM, ~~1959~~ 1960

No. ~~326~~ 5

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, APPELLANT,

vs.

EGAN, GOVERNOR OF ALASKA, ET AL.

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APPEALS FROM THE DISTRICT COURT OF THE STATE OF ALASKA

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[fol. 1]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA DIVISION NUMBER ONE, AT JUNEAU

Civil Action File No. 8066-A

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, a Federally Chartered Corporation, Plaintiff,

vs.

WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, Defendants.

NOTICE OF APPEAL

I. Notice Is Hereby Given that the Metlakatla Indian Community, Annette Island Reserve, A Federally Chartered Corporation, Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the District Court for the State of Alaska, Division Number One, Juneau, Alaska, entered July 2, 1959, dismissing the complaint filed by the Appellant.

This appeal is taken pursuant to 28 USC 1257 (1) and (2).

[fol. 2] II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint filed by Metlakatla Indian Community, Annette Island Reserve, with affidavits of William Coyne, Raymond V. Haldane, Henry J. Duncan, and Henry S. Littlefield attached.
2. Motion for Preliminary Injunction filed by Metlakatla Indian Community, Annette Island Reserve.

3. Motion to Dismiss Complaint filed by Appellee William A. Egan against Metlakatla Indian Community, Annette Island Reserve.

4. Affidavit of Walter Kirkness filed by Appellee, William A. Egan, in the consolidated companion cases of Kake and Angoon v. Egan, Nos. 8063-A and 8064-A, which affidavit was herein incorporated by stipulation in open Court.

5. Affidavits of Haakan Friele and Clarence D. Payne, filed by the Organized Villages of Kake and Angoon in the consolidated companion cases of those villages against Egan, No. 8063-A and 8064-A, which affidavits were herein incorporated by stipulation in open Court.

6. Brief of Appellant, Metlakatla Indian Community, Annette Island Reserve, filed in support of Complaint.

7. Brief of Appellee, William A. Egan, filed in support of Motion to Dismiss Complaint.

8. Affidavits of Alf Erickson, Neil Grant, Harold Martindale, William E. Smith, and Andy Wikan, filed by Appellee, William A. Egan, in the consolidated companion cases of Kake and Angoon v. Egan, Nos. 8063-A and 8064-A, which affidavits were herein incorporated by stipulation in open Court.

9. Reporter's transcript of proceedings of June 29, 1959, relating to assumption of jurisdiction by District Court as a State Court.

[fol. 3] 10. Reporter's transcript of record of proceedings on July 1, 1959, containing Appellant's oral notice of appeal.

11. Opinion rendered by the Court on July 1, 1959.

12. Motion for preliminary injunction pending appeal filed by Metlakatla Indian Community, Annette Island Reserve.

13. Order of Court denying motion for injunction pending appeal.

14. Supplemental findings of fact entered by Court on July 2, 1959.

15. Judgment of dismissal of the complaint of Metlakatla Indian Community, Annette Island Reserve, entered July 2, 1959.

III. The following questions are presented by this appeal:

1. Is all authority to administer and manage the fish and wildlife resources of Alaska for the year 1959 reserved to the Federal Government by the terms of Section 6 (e) of the Alaska Statehood Act, 72 Stat. 339, so as to make the Alaska criminal statutes, 17 SLA 1959 as amended by 95 SLA 1959, unenforceable against the appellant by the State and its officials, and so as to make the regulations issued by the Secretary of the Interior (24 FR 2053 et seq.) March 7, 1959, allowing appellant to fish the trap sites therein designated a valid exercise of that authority?

2. If Section 6 (e) of the Alaska Statehood Act, 72 Stat. 339, does purport to reserve such control to the Federal Government and thereby render inapplicable the Alaska criminal statutes, does Section 6 (e) violate the "equal footing" doctrine governing the admission of new States to the Union?

3. Does the Alaska Statehood Act, 72 Stat. 339, in Section 4 thereof and in its adoption and ratification of the Alaska Constitution (in this instance specifically Article XII, Section 12 thereof) comprehend a permanent disclaimer by the State of Alaska of control over Indian fishing within the State, and if so, is Section 4 of the Statehood Act an assumption of permanent jurisdiction (subject to further act of Congress) by the Federal Government over the location and manner of Indian fishing within the State, and further are the [fol. 4] regulations issued by the Secretary of the Interior (24 FR 2053 et seq.) March 7, 1959, allowing Appellant to fish the trap sites therein designated a valid exercise of that authority?

4. If the Alaska Statehood Act does so comprehend a permanent disclaimer by the State of Alaska and a permanent assumption of jurisdiction by the Federal Government, does it violate the "equal footing" doctrine governing the admission of new States to the Union?

5. Is the Alaska Statehood Act Congressional action of such a type, solely by virtue of its passage, as held by the District Court, that would eliminate and abolish that portion of the Annette Island Reserve (3000 feet of water surrounding the Island Reserve and the tidelands underlying said waters) which was established by Act of Congress (48 USC 358) in 1891, and vest title thereto, and the ownership thereof, in the State of Alaska?

6. Does the Secretary of the Interior derive his power to authorize reservation wards to fish on their reservation with designated gear and designated locations pursuant to the provisions of the White Act (48 USC Section 221), as was held by the District Court, or does the Secretary of the Interior derive such powers from the Act of Congress establishing the Annette Island Reserve which entrusted to him the powers and duties of administering said wards (48 USC Section 358)?

7. Did the lower Court err in inferentially holding that the Annette Island Reserve was not "Indian country" as defined in 18 USC Section 1151, and that, therefore, the provisions of 18 USC Section 1162 (1) were not applicable to the State of Alaska, and (2) Alaska could control and regulate by means of criminal prosecution, the fishing of the Indian wards within the boundaries of the Annette Island Reserve?

....., Of Counsel for Metlakatla Indian Community, Annette Island Reserve, Box 1079, Ketchikan, Appellant.

[fol. 5] Proof of Service (omitted in printing).

[fol. 6]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Civil Action File No. 8066-A

[Title omitted]

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, for cause of action against defendants herein, alleges:

I

This is an action for injunctive relief brought pursuant to Rule 65 of the Federal Rules of Civil Procedure.

II

That plaintiff herein is a federally chartered corporation, organized and existing under the laws of the United States and is qualified to bring suit and to be sued in courts of competent jurisdiction.

[fol. 7] (a) The original Tsimpsean Indians migrated in 1886 from British Columbia to the site of the present day Metlakatla Indian Community, located on Annette Island, Alaska. The emigration and settlement of these peoples were not only acquiesced in, but encouraged by, executive and administrative officers of the United States. The Metlakatla Indian Community prospered in its reserve; native born Alaskan Indians joined the original settlers, acquiring all the right and privileges of the original emigrants. Today the town has a population of approximately 1,000 inhabitants. The townsite is divided into streets and alleys, blocks, and lots for residential and commercial purposes. Title to the structures thereon is vested in the individual owners thereof, but title in fee, not only to the townsite, but also to all the lands within the reservation are held in trust for the members of the Metlakatla Indian Community by the United States. There are churches, homes and

stores; in general, Metlakatla bears a resemblance to any other small town in Alaska. It owns and operates for the benefit of the community the Annette Island Canning Company, and its economy is based almost entirely upon its fishery resources.

[fol. 8] (b) By Act of Congress of March 3, 1891, (Title 48, U.S.C.A., Section 358), the present day Annette Island reserve was established. The Act provided as follows:

"Until otherwise provided by law, the body of lands known as Annette Islands, situated in Alexander Archipelago in Southeastern Alaska on the North side of Dixon's Entrance, is set apart as a reservation for the use of the Metlakatla Indians, and those people known as Metlakatlans, who, on March 3, 1891, had recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior."

(c) On June 25, 1915, pursuant to the provisions of the Act creating the Annette Islands reserve, the Secretary of the Interior, for the first time, prescribed certain rules and regulations for the government of Metlakatla Indians and other Alaska Indians residing there.

(d) On February 11, 1915, the Secretary of the Interior ruled and ordered that permits could be issued to natives of Metlakatla to erect salmon traps on the shores of Annette Island, and for other purposes. The pertinent part of the order stated "That, until otherwise ordered by the Secretary of the Interior, natives or associations of natives of Metlakatla who [fol. 9] have secured the approval of the Council of the Annette Islands reserve be given permits by the Secretary of the Interior to erect salmon traps on the shores of Annette Island".

(e) The Annette Islands reserve was increased to include the waters within three thousand (3000) feet from the shore at mean low tide of Annette Island, Ham Island, Lewis Island, Spire Island, Hemlock Island, and the adjacent rocks and islets and also the bays of said Islands, rocks and islets. The inclusion of the waters to a distance of 3000 feet from the shore at mean low tide, as aforesaid, was accomplished by Presidential Proclamation No. 1332, signed and issued on April 28, 1916. The proclamation was issued by virtue of the authority contained in Title 43, U.S.C.A., Section 141. The reasons for thus including these waters, as stated in said proclamation, were that the Secretary of the Interior, in order to assist the Metlakatlans to become self-supporting, had decided to place in operation a cannery on Annette Island, and that to preserve a supply of fish and other aquatic products for the cannery it was necessary to establish an exclusive fishery for the Metlakatlans. To buttress the manifest intent of the President of the United States, the proclamation [fol. 10] added, "Warning is hereby given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned."

(f) The legal position has always been taken, since the reserve was created, that the traps and cannery are instrumentalities of the United States provided by the United States on the Annette Island reserve for the betterment of the Indian inhabitants thereof.

(g) The relation of guardian and ward exists between the United States and the Metlakatla Indians; it is the duty of the United States to preserve and protect the rights of the Metlakatla Indians through the courts; the Secretary of the Interior, by virtue of the statute of March 3, 1891, as well as by virtue of his general supervisory power over the Indian people who are wards of the nation, is authorized to enact and promulgate such regulations and restrictions as may promote their welfare; the power thus

given the Secretary of the Interior was, and is, a continuing power.

(h) In 1953, Congress enacted Chapter 29, Title 43, U.S.C.A., the "Submerged Lands" Act, under the provisions of which, the several states were, generally speaking, vested with title and ownership to the lands beneath navigable waters within their respective boundaries. The Act contained two significant exceptions found in Section 1313, designated respectively [fol. 11] as (a) and (b):

(a) "all tracts or parcels of land together with accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under any claim of right.

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians;"

(i) The Alaskan Admission Act, Public Law 85-508, Section 4 thereof, provides:

"As a compact with the United States, said state and its people do agree and declare that they forever disclaim all right and title to any lands or other

property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives), or is held by the United States in trust for said natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and [fol. 12] remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation:"

It seems apparent that not only does the United States hold title in fee to the Annette Islands reserve, including the waters to a distance of 3000 feet from the shore at mean low tide, but it also further appears that the State of Alaska has forever specifically disclaimed all right and title to lands and property the right or title to which is held by the United States or is subject to disposition by the United States, or which lands or property are held by the United States in trust, as is the case here, for Indians, which trust includes an exclusive fishery for the Metlakatla Indians.

(j) On March 7, 1959, by order found in Section 115.26, 24 Fed. Reg., page 2069, the Secretary of the Interior authorized the Metlakatla Indian Community to install and operate the hereinafter described traps at the designated locations for the 1959 salmon fishing season:

(1) Annette No. 3, located at 55°02′47″ North lat., 131°38′53″ West long.

(2) Annette No. 4, located at 55°05′41″ North lat., 131°19′31″ West long.

(3) Annette No. 6, located at 55°00′45″ North lat., 131°38′30″ West long., and

(4) Annette No. 8, located at 55°10′13″ North lat., 131°19′31″ West long..

[fol. 13] The trap sites above enumerated are all wholly within the waters of the Annette Islands reserve, as created by the laws of the United States.

III

This action involves questions under the laws of the United States, including, but not necessarily limited to, those enumerated in Paragraph II hereof, and the laws of the State of Alaska, including, but not necessarily limited to, Chapters 17 and 94, SLA, 1959; the matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00 and diversity of citizenship exists between the parties; more important, a substantial federation question is hereby raised and herein presented.

IV

When the aforementioned order was issued by the Secretary of the Interior on March 7, 1959, plaintiff began preparing traps for installation at the designated trap sites. The approximate cost to plaintiff by the time the traps are ready for setting, to-wit: July 6, 1959, will be in excess of $50,000.00. More than $35,000.00 had been expended in preseason preparatory work by plaintiff on its traps before the defendants advised plaintiff, on or about May 25, 1959, that the defendants intended to eliminate all fish traps from Alaskan waters, the laws of the United States and regulations of the Secretary of the Interior to the contrary notwithstanding. To curtail trap operations at this late date would result in an approximate loss to plaintiff, including moneys already disbursed, of almost $64,500.00.

[fol. 14] V

Plaintiff packed 68,700 cases of salmon in 1958, 25,763 cases of which were directly attributable to its trap-caught fish. The production cost of the seasonal operation was

$1,022,387.79. The market value of the total 1958 pack, after selling expenses, was $1,326,959.91. Sworn affidavits filed herewith and made a part hereof conclusively show that, had it not been for the supply of trap-caught fish, plaintiff's 1958 operation would have resulted in an approximate loss of $65,279.88. The profit on the total pack for 1958 was $253,106.38; without its trap-caught fish, plaintiff would have sustained a net loss in excess of $318,000.00.

VI

Plaintiff derives almost all of its seasonal pack from trap-caught fish and fish caught by seine vessels. If the right of plaintiff to utilize its fish traps is abolished, the supply of fish for plaintiff's cannery will be eliminated or so substantially diminished as to imperil the operation thereof for 1959, and necessitate the abandonment thereof for subsequent years. The investment in trap gear and related equipment will be rendered useless for 1959, and will have little salvage value. The catch of seine vessels or other mobile gear is already fully utilized, and no substantial increase in catch from these sources can be expected with which to replace lost trap production.

VII

As is conclusively shown by sworn affidavits herewith filed, plaintiff, over the last seven years of its operations, could not have operated profitably without its trap-caught fish; indeed, had it not been for the supply of fish provided [fol. 15] by the Metlakatla traps in past years, the canning operation would have been abandoned by plaintiff before 1959.

VIII

The Metlakatla Indians are a seafaring people who have always turned to the sea for their livelihood. The economy of the community depends upon its annual fishing endeavor. If the cannery were to be prohibited from operating by the curtailment of its supply of trap-caught fish, members of the community who now make their only annual wages in the cannery would be impoverished. The seasonal can-

nery payroll, in excess of $100,000.00, would be forever lost unto them. Moneys thus earned are spent during the winter months for food, clothing and other necessities of life. If these cannery wages were to be eliminated, there would be no other work available on the Annette Island reserve. The community would become economically dormant, its people would disperse, they would necessarily lose the self-supporting status they have achieved, public welfare rolls would swell, and the very purposes for which the Congress of the United States created the Annette Islands reserve would be circumvented and defeated.

IX

Plaintiff has pledged a substantial part of the earnings derived from its salmon cannery operation to the United States to retire loans aggregating almost $1,800,000.00. Without trap caught fish, as aforesaid, the cannery cannot be operated profitably; hence, abolition of the plaintiff's traps will necessarily cause it to default on its loan obligations; these allegations are supported by sworn affidavits herewith filed and made a part hereof.

[fol. 16] X

Chapters 17 and 94, SLA 1959, are unconstitutional and invalid in that they are in derogation of, and in direct conflict with, the applicable federal laws as set forth in Paragraph II hereof. Section 1 of Chapter 17, SLA 1959, provides for the imposition of fines and/or imprisonment upon those who violate the provisions of the Act. To violate the Act, all one has to do is "erect, moor or maintain fish traps, on or over lands or tidelands owned or hereafter acquired by the State of Alaska." Under the provisions of Chapter 94, SLA 1959, although, to the plaintiff's knowledge, such has not been done yet, the Board of Fish and Game has power to enact rules or regulations having the force of law, a violation of which would result in fines and/or imprisonment, as well as confiscation of plaintiff's gear.

XI

Defendants have threatened publicly, on several occasions, to invoke "the police power of the State" in order to eliminate fish traps and to prohibit their operation from and in the coastal waters of Alaska within the Annette Islands reserve; the defendant Governor of the State has also stated publicly, as recently as June 13, 1959, at Metlakatla, Alaska, that he was "sworn to uphold the constitution and laws of the State of Alaska" and that "the State Government would neither hesitate nor waver in its obligation to enforce the law." Defendants have likewise threatened to invade plaintiff's reservation to enforce State laws (see affidavits herewith filed and made a part hereof). These threats are not idle in nature, but have been made with deliberate intent and purpose. Prosecution is imminent and immediate, and, if these threats are carried out, plaintiff will sustain exceptional and irreparable in- [fol. 17] jury, if as a result thereof, use of its fish traps are prohibited or said traps are confiscated.

VII

Plaintiff is informed, fears and believes that defendants will seek to enforce the criminal provisions of Section 1 of Chapter 17, SLA 1959, or rules and regulations promulgated by the Board of Fish and Game pursuant to the provisions of Chapter 94, SLA 1959. Arrests of natives of other communities engaged in pre-season work on floating fish traps have already been made and one trap seized, as recently as June 17, 1959, and those natives are now awaiting arraignment and prosecution. Defendants at present have two vessels near trap sites at Kake and Angoon, both native villages in Southeastern Alaska, which vessels are manned by fully armed State Police. Defendants, unless restrained and enjoined from so doing, will carry out their threats to cause like arrests to be made of the plaintiff's members, and its traps, nets, gear, etc., confiscated, all of which would constitute grievous, immediate and irreparable loss and injury to plaintiff and its members; these allegations are supported by sworn affidavits filed herewith and made a part hereof.

VIII

Plaintiff has no plain, speedy and adequate remedy at law to challenge the constitutionality and validity of State laws for the reason that time is of the essence, and were the determination of the rights of the parties to be adjudicated on the basis of criminal prosecutions, both pending and threatened, the 1959 trap-caught fish would necessarily be lost irretrievably by the plaintiff. Furthermore, plaintiff would be without a speedy, plain and adequate [fol. 18] remedy of law in any event, inasmuch as State law prohibits an action against the State for damages if the claim for which damages are sought is predicated upon the acts of agents or employees of the State of Alaska, the doing of which acts has been exercised in the execution of State statutes or regulations, irrespective of the validity or invalidity thereof.

XIV

The action threatened by the defendants violates, and is repugnant to, the laws of the United States and the Constitution of the State of Alaska in that not only is the State attempting to encroach upon and eliminate federal instrumentalities, but it also threatens to act in violation of the following:

1. The laws of the United States of America prevent the State of Alaska, or any officer or agent thereof, from exercising any control over the supervision and management of the fish and wild life in Alaska at this time (see Section 6 (e) Statehood Act, 72 Stat. 339).

2. The laws of the United States of America (Section 4, Statehood Act, Section 4, 72 Stat. 339) and the Constitution of the State of Alaska (Article XII, Section 12) prevent the State of Alaska from interfering with the control and management of Indian fishing rights held either by Indians or held by the United States of America in trust for Indians, at any time, now or in the future.

3. The regulations issued by the Secretary of the In- [fol. 19] terior (24 Fed. Reg., 2053 et seq.), on March 7, 1959, allowing the plaintiff to operate and utilize four fish traps at the sites noted hereinabove constitute an exercise by the United States of its exclusive power both over the whole Alaska fisheries and over the fishing rights of Indians.

4. The Commerce Clause of the Constitution of the United States of America places the regulation of the social and economic welfare of Indians exclusively within the power of Congress of the United States, as well as that of the fish and wild life resources of the United States.

5. That the statute under which the defendants claim their authority (17 SLA 1959), the claim of Constitutional mandate (Ordinance No. 3), and the general claim of police power are all repugnant to the principles and laws above stated and therefore are in violation of the laws of the United States, the Constitution of Alaska, and the Constitution of the United States of America; they are, therefore, unconstitutional, invalid, void and of no force and effect.

XV

That in recent weeks public interest in the controversy has mounted. Isolated outbreaks of violence have already taken place and it is feared that if the situation is allowed to continue without a determination of the rights of the [fol. 20] parties immediately that violence will increase; especially is this true if the State officials adhere to their manifested and announced course of action to invade the plaintiff's reservation and to enforce invalid and unconstitutional State laws, rules and regulations. The public interest and welfare could best be served by an immediate hearing on the question of the aforementioned rights.

XVI

By way of recapitulation, and as hereinabove set forth, plaintiff is without a plain, speedy and adequate remedy at

law to have the constitutionality of defendants' acts determined; plaintiff contends that the laws of Alaska are unconstitutional and invalid as applied to it or its members, because of its reservation status and the applicable laws involved; plaintiff will suffer immediate, exceptional and irreparable loss, damage or injury if the defendants, their officials, agencies, employees and servants are not restrained and enjoined from trespassing on plaintiff's lands or waters, and restrained and enjoined from enforcing, or attempting to enforce, unconstitutional and invalid State laws.

Wherefore, Plaintiff prays that the Court herein issue a temporary restraining order restraining the defendants, their officials, agencies, employees and servants from committing any act of trespass upon plaintiff's reservation, held in trust for it and its members by the United States of America; that defendants, their officials, agencies, employees and servants be restrained from enforcing or [fol. 21] attempting to enforce any of the laws of the State of Alaska which allegedly gives the defendants the right so to invade plaintiff's reservation, and to arrest, fine and/or imprison, and confiscate; plaintiff further prays that defendants be ordered forthwith to appear before this Honorable Court to show cause, if any such there be, on a date to be fixed by this Court, why preliminary injunctions should not be issued against the defendants enjoining their officials, agencies, employees and servants from invading plaintiff's reservation, held for it and its members in trust by the United States of America, and enjoining defendants, their officials, agencies, employees and servants from enforcing, or attempting to enforce, unconstitutional and invalid State laws, rules or regulations; plaintiff further prays that upon trial of this cause the Court issue its permanent injunction enjoining the defendants, their officials, agencies, employees and servants from trespassing upon or invading plaintiff's reservation, held for it and its members in trust by the United States of America, and that the defendants, their officials, agencies, employees and servants be enjoined from enforcing or attempting to enforce, unconstitutional and invalid State laws, rules or regulations, or in anywise interfering with plaintiff's exclusive fishery rights.

Plaintiff further prays the Court that, as applied to it, Chapter 17, SLA 1959, Ordinance No. 3 of the Constitution of the State of Alaska and all other laws of the State of Alaska relied upon by defendants as authority for their interference with plaintiff's fishery rights, be adjudicated unconstitutional, invalid, void and of no force and effect.
[fol. 22] Dated at Juneau, Alaska, this 23rd day of June, 1959.

Ziegler, Ziegler & Cloudy, Counsel for plaintiff.

Duly sworn to by Henry S. Littlefield, jurat omitted in printing.

[fol. 23]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Civil Action File No. 8066-A

[Title omitted]

AFFIDAVIT OF WILLIAM COYNE

State of Alaska)
First Judicial Division) ss:

William Coyne, being first duly sworn, on oath, deposes and says as follows:

I am the Manager of the Annette Island Canning Company which is owned and operated by the Metlakatla Indian Community. I have served in this capacity since the late 1940's and am thoroughly familiar with the canning operation and its economy upon Metlakatla and the inhabitants thereof.
[fol. 24] As Manager of the Annette Island Canning Company, employed as such by the Council Annette Islands Reserve, and in connection with the 1959 operation, I did not follow my usual procedure of ordering trap supplies and equipment at the conclusion of the 1958 season, or in the subsequent winter months, because of the uncertain

condition of the status of fish traps. However, in early March of this year, the Secretary of the Interior authorized Metlakatla to fish four traps during the 1959 season, and pursuant to this order, I proceeded with pre-seasonal preparations. To date we have spent approximately $50,000.00 of cannery funds in this work and by July 13, 1959, the date of the season opening, we will by then owe approximately another $50,000.00 for a total of $100,000.00. Undersecretary of the Interior, Elmer Bennett, advised the Area Director for the Bureau of Indian Affairs, under date of March 10, 1959, as follows:

> "As you know, under section 4 of the act of July 7, 1958 (72 Stat. 339), the State of Alaska disclaimed jurisdiction over any lands or other property, including fishing rights, held by any Indians, Eskimos, or Aleuts, or which is held by the United States in trust for them, and recognized continuing federal authority thereover. This disclaimer, coupled with the long-standing supervisory control exercised for the protection of the interests of Indians, Eskimos and Aleuts by the Department of the Interior, accounts for the provision that the proposed regulations will not eliminate operation of the fish traps by Indian tribes or villages. The Secretary will continue to control the operation of traps by Indian tribes and villages.
>
> The Angoon Community Association, the Organized Village of Kake, and the Metlakatla Indian Community, may proceed to make plans for operation of their salmon canneries in 1959 on the basis that they will be permitted to continue to operate the number of fish traps consistent with proper conservation practices recommended by this Department."

The canned salmon business in Alaska involves an unusually high percentage of fixed costs as compared to other industries in and out of Alaska. Even direct canning labor is a fixed item of cost; that is, it does not vary with volume of production. This is so because of the seasonal guarantees paid to most all workers. The guaranteed sum is the same, regardless of the hours worked or the number of cases

produced. Cans, cartons, and southbound shipping costs are the only major items of cost that vary directly with the volume produced.

In such a situation, the number of cases that can be put through a plant has a decided bearing on the per case production costs. In fact, the maintenance of high volume may be said to be the "key" to successful operation. The elimination of traps from the Annette operation would, of [fol. 25] course, reduce the potential volume of fish available for canning. The question here is what effect would the reduced volume have on the financial results of the operation, and that is answerable only by reference to prior year's results adjusted for an assumed elimination of trap volume.

The approach adopted in the accompanying analytical schedules is to start with the known results of prior years operations as recorded in financial statements audited by Ernst & Ernst, C.P.A.s. Then to eliminate the sales value, production costs, administrative expenses and the profit or loss attributable to cases of salmon produced from the trap catch. The remaining sales and costs after this elimination are then attributable to cases produced from the seine catch and the resulting profits or losses can be calculated.

The problem could also be solved by analyzing and classifying all expense items as to fixed and variable costs, and then apportioning the fixed costs to the smaller volume of seine catch alone. The same results would be obtained, but the figures and calculations would not be so readily traceable to the audited financial statements.

The accompanying schedules contain full details of the items attributable to trap case production, the elimination thereof, and the calculated results. It may, however, be helpful to point out and comment on a few of the major items:

1. The *net sales values* of trap cases is obtained by multiplying the known trap cases by specie by the average sales price by specie, and deducting the per case selling expenses multiplied by the known cases—see Schedule "B".

2. The *direct trap costs* are all eliminated—see Schedule "B".

3. *Cans, cartons, salt and shipping costs* are eliminated on a direct per case basis (unit cost × trap cases).

4. *Labor*—It is assumed that had traps not operated, the operation would have been cut to one line, eliminating 34 employees. Labor cost is, therefore, reduced by 34 × the seasonal guarantee paid in each year.

5. The elimination for cannery overhead includes the depreciation on trap equipment, and the other smaller items detailed on schedule "C". Except for depreciation, it was necessary to estimate the amounts involved.

6. The elimination from *administrative expense* includes association dues on an actual per case basis, and an estimate of interest savings resulting from less volume to finance.

[fol. 26] The eliminations for production costs attributable to trap case production are probably higher than actual. The labor elimination, for example, assumes elimination of one full line and does not allow for overtime in excess of guarantees that might result from canning on only one line. It is believed, therefore, that the losses from the hypothetical trap elimination are definitely not overstated and may possibly be understated.

The accompanying schedules include:

"A"—A summary of effect of trap production on operations—showing losses, increased costs, and a breakdown of the losses resulting from increased costs and from lost profits.

The total loss consists of the difference between the actual profit or loss and the calculated profit or loss had traps not operated. For example, in 1958 Metlakatla would have had a $65,279.88 loss instead of the actual $253,106.38 profit. So the total loss to Metlakatla would have been $318,-386.26.

"B"—A summary of the calculations, supports schedule A.

"C"—Detail of cost reductions that could be made if the traps were not operated. Supports various totals used in schedule B.

"D"—Pack and sales statistics, showing detailed calculation of the sales value of cases produced from trap fish. Supports schedule C.

It is my considered opinion that if Metlakatla is deprived of its trap-caught production, economic reality will compel, necessarily, the complete curtailment of the cannery operation at Metlakatla with these results:

1. The cannery buildings will deteriorate and be forever lost to Metlakatla.
2. The community will lose its primary and almost its sole source of income.
3. Metlakatla will be forced to default on its loan obligations.
4. The Metlakatla Indian Community will wither and die; it cannot exist without the cannery, and the [fol. 27] cannery cannot operate without enough fish to make the operation profitable; only by the utilization of traps will there be sufficient production to make the seasonal operation pay.

Dated at Ketchikan, Alaska, this 19th day of June, 1959.

William Coyne

Subscribed and sworn to before me this 19th day of June, 1959.

Ruth E. Brown, Notary Public for Alaska, My Commission expires: 9/18/60.

[fol. 27a]

SCHEDULE "A" TO AFFIDAVIT

(See Opposite) ☞

Schedule "A" to Affidavit

SUMMARY OF
EFFECT OF TRAP PRODUCTION ON OPER
Annette Islands Canning Co.

June 15, 1959

	1952 - 1958	
	1958	195
Net profit or (loss) that would have resulted if traps had not operated	($ 65,279.88)	($ 24,1
Actual profit or (loss) that resulted with traps	253,106.38	34,4
Total unrecovered overhead and profits that Metlakatla would have lost if traps had not operated	($318,386.26)	($ 58,6
Packs - 48/1# Cases		
Trap	25,763	8,3
Seine	42,937	45,0
TOTAL	68,700	53,3
Increase in per case production costs without trap volume	$ 4.81	$
Increase in production costs without trap volume (seine cases x cost increase)	$206,526.97	$ 35,1
Profit on sale of trap cases	111,859.29	23,5
TOTAL LOSS	$318,386.26	$ 58,6

NOTES:

1. The two years 1954 and 1958 are considered p
1956 was a fair year. 1957 and 1955 were po
and 1952 and 1953 were loss years. This pe
therefore, representative of all conditions.

2. The increased volume provided by traps was
effective both in increasing profits (see 1958)
in reducing losses (see 1952).

Affidavit

OF
ION ON OPERATIONS
nning Co.

58

	1957	1956	1955	1954	1953	1952	Seven Year Total	Seven Year Average
.88)	($ 24,154.98)	($ 63,999.70)	($ 15,640.00)	$ 55,907.06	($124,049.18)	($194,865.57)	($ 432,082.25)	($ 61,726.04)
.38	34,478.03	106,496.85	10,990.44	347,803.09	(116,325.56)	(33,509.64)	603,039.59	86,148.51
.26)	($ 58,633.01)	($170,496.55)	($ 26,630.44)	($291.896.03)	($ 7,723.62)	($161,355.93)	($1,035,121.84)	($147,874.55)
	8,308	13,845	5,793	22,390	10,051	19,327	105,477	15,068
	45,030	49,627	31,095	52,547	39,932	26,806	287,974	41,139
	53,338	63,472	36,888	74,937	49,983	46,133	393,451	56,207
.81	$ .78	$ 2.55	$ .58	$ 2.64	$ .09	5.33		
.97	$ 35,123.40	$126,548.85	$ 18,035.10	$138,724.08	$ 3,593.88	$142,875.98	$671,428.26	$ 95,918.32
.29	23,509.61	43,947.70	8,595.34	153,171.95	4,129.74	18,479.95	363,693.58	51,956.23
.26	$ 58,633.01	$170,496.55	$ 26,630.44	$291,896.03	$ 7,723.62	$161,355.93	$1,035,121.84	$147,874.55

e considered good years.
1955 were poor years,
ars. This period is,
conditions.

by traps was highly
fits (see 1958) and

[fol. 27b]

SCHEDULE "B" TO AFFIDAVIT

(See Opposite) ☞

Schedule "B" to Affidavit

EFFECT OF TRAP PRODUCTION ON OPERATIONS
SUMMARY OF CALCULATIONS
Annette Islands Canning Co.

June 15, 1959

	1958	1957	1956
Net sales less selling expenses	$1,326,959.91	$1,043,898.70	$1,295,091.90
Less trap fish	498,756.21	178,068.76	299,296.24
	$ 828,203.70	$ 865,829.94	$ 995,795.66
Production costs	$1,022,387.79	$ 983,467.84	$1,161,455.23
Less cost reductions if no traps	177,020.76	117,940.31	126,722.94
	$ 845,367.03	$ 865,527.53	$1,034,732.29
Gross Profit (loss) if no traps	($ 17,163.33)	$ 302.41	($ 336,936.63)
Administrative expense, interest, etc.	$ 51,465.74	$ 25,952.83	$ 27,130.92
Less cost reductions if no traps	3,349.19	1,495.44	2,078.75
	$ 42,116.55	$ 24,457.39	$ 25,063.07
Net profit (loss) if no traps	($ 65,279.88)	($ 24,154.95)	($ 63,999.70)
Net profit (loss) actual	253,106.38	24,478.03	106,496.85
Loss to Metlakatla	($ 318,386.26)	($ 58,633.01)	($ 170,496.55)
Pack			
Production costs - Seine fish	$ 845,387.03	$ 865,527.53	$1,034,732.29
Cost per case	19.69	19.22	20.85
Production costs - Seine & Trap fish	$1,022,387.79	$ 983,467.84	$1,161,455.23
Cost per case	14.86	18.44	18.30
Total cases	68,700	53,338	63,472
Trap fish - Cases	25,763	8,306	13,845
	42,937	45,030	49,627

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ON OPERATIONS
LATIONS
ng Co.

	1957	1956	1955	1954	1953	1952	Seven Year Total	Seven Year Average
91	$1,043,898.70	$1,295,091.90	$ 756,321.92	$1,308,840.88	$ 720,163.28	$ 721,208.80	$7,172,485.39	$1,024,640.77
21	178,068.76	299,296.24	122,978.16	435,673.31	169,564.75	327,474.00	2,031,812.43	290,258.92
70	$ 865,829.94	$ 995,795.66	$ 633,342.76	$ 873,167.57	$ 550,598.53	$ 393,734.80	$5,140,672.96	$ 734,381.85
79	$ 983,467.84	$1,161,455.23	$ 722,831.61	$ 935,422.67	$ 813,091.16	$ 734,219.91	$6,372,876.21	$ 910,410.89
76	117,940.31	126,722.94	95,363.91	$ 141,090.48	159,931.44	164,571.91	982,641.75	140,377.39
03	$ 865,527.53	$1,034,732.29	$ 627,467.70	$ 794,332.19	$ 653,159.72	$ 569,648.00	$5,390,234.46	$ 770,033.50
33)	$ 302.41	($ 336,936.63)	$ 5,875.06	$ 778,835.38	($ 102,561.19)	($ 175,013.20)	($ 249,561.50)	($ 35,651.64)
74	$ 25,952.83	$ 27,130.92	$ 22,499.87	$ 25,615.12	$ 23,397.68	$ 20,498.53	$ 196,569.59	$ 28,081.37
19	1,495.44	2,078.75	984.81	2,686.80	1,009.69	1,546.16	14,048.84	2,006.98
55	$ 24,457.39	$ 25,063.07	$ 21,515.06	$ 22,928.32	$ 21,487.99	$ 18,952.37	$ 182,520.75	$ 26,074.39
88)	($ 24,154.95)	($ 63,999.70)	($ 15,640.00)	$ 55,907.06	($ 124,049.18)	($ 194,855.57)	($ 432,082.25)	($ 61,726.04
38	24,478.03	106,496.85	10,990.44	347,803.09	(116,325.56)	(33,509.64)	603,039.59	86,148.51
26)	($ 58,633.01)	($ 170,496.55)	($ 26,630.44)	($ 291,896.03)	($ 7,723.62)	($ 161,355.93)	($1,035.121.84)	($ 147,876.55)
03	$ 865,527.53	$1,034,732.29	$ 627,467.70	$ 794,332.19	$ 653,159.72	$ 569,648.00	$5,390,234.46	$ 770,633.49
	19.22	20.85	20.18	15.12	16.36	21.25		
79	$ 983,467.84	$1,161,455.23	$ 722,831.61	$ 935,422.67	$ 813,091.16	$ 734,219.91	$6,372,876.21	$ 910,410.89
	18.44	18.30	19.60	12.48	18.27	15.92		
	53,338	63,472	36,888	74,937	49,983	48,133	393,451	56,207
	8,306	13,845	5,793	22,390	10,051	10,327	105,477	15,668
	45,030	49,627	31,095	52,547	39,932	26,806	287,974	41,139

[fol. 27c]

SCHEDULE "C" TO AFFIDAVIT

(See Opposite) ☞

Schedule "C" to Affidavit

COST REDUCTIONS IF NO TRAPS ARE OPERATED

June 15, 1959 SUPPORTING SCHEDULE "B"
Annette Islands Canning Co.

	1958	1957	1956
COST REDUCTIONS IF NO TRAPS DIRECT TRAP COSTS:			
Trap Construction Labor & Material	$ 37,875.69	$ 34,088.59	$ 34,658.87
Floating Equipment Costs	22,192.11	21,228.41	20,258.96
Trap Watchmen and Mess	9,880.19	7,148.67	8,819.96
Cans, Cartons, Salt	54,617.56	17,446.80	26,167.05
Labor - See below	19,094.00	18,360.00	14,688.00
Cannery Overhead - See below	16,100.00	14,600.00	14,100.00
Longshoring	515.26	249.20	553.80
Shipping Expenses - Cannery to Seattle	16,745.95	4,818.64	7,476.30
	$177,020.76	$117,940.31	$126,722.94
Administrative Expenses:			
Association Dues	2,061.04	996.98	1,384.50
Interest	1,288.15	498.48	692.25
	$ 3,349.19	$ 1,495.44	$ 2,076.75
CANNERY OVERHEAD REDUCTIONS			
Cannery Mess	1,000.00	1,000.00	1,000.00
Fuel Oil	400.00	400.00	400.00
Insurance	2,500.00	1,500.00	1,500.00
Transportation	500.00	450.00	450.00
Rubber clothing and Gloves	200.00	250.00	250.00
Depreciation	7,000.00	7,000.00	7,000.00
Miscellaneous Items	4,500.00	4,000.00	3,500.00
	$ 16,100.00	$ 14,600.00	$ 14,100.00
LABOR COST REDUCTIONS			
34 Employees x Seasonal Guarantee	17,680.00	17,000.00	13,600.00
Payroll Taxes and Insurance	1,414.00	1,360.00	1,088.00
	$ 19,094.00	$ 18,360.00	$ 14,688.00
Seasonal Guarantee	$ 520.00	$ 500.00	$ 400.00

Affidavit

APS ARE OPERATED

EDULE "B"

anning Co.

	1957	1956	1955	1954	1953	1952	Seven Year Total	Seven Year Average
6.69	$ 34,088.59	$ 34,658.87	$ 27,908.68	$ 31,100.89	$ 59,117.14	$ 47,785.64	$272,535.50	$38,933.64
2.11	21,228.41	20,258.96	19,175.51	22,214.27	36,867.31	35,839.23	177,775.80	25,396.54
0.19	7,148.67	8,819.96	8,088.52	8,938.12	14,546.79	11,526.18	66,948.43	9,564.06
7.56	17,446.80	26,167.05	10,601.19	38,063.00	16,634.66	31,696.28	195,276.54	27,896.65
4.00	18,360.00	14,688.00	14,688.00	14,688.00	14,688.00	14,688.00	110,894.00	15,842.00
0.00	14,600.00	14,100.00	13,600.00	13,100.00	12,600.00	12,600.00	96,700.00	13,814.29
6.26	249.20	553.80	231.72	1,119.50	502.55	773.08	3,945.11	563.59
6.95	4,818.64	7,476.30	3,070.29	11,866.70	4,924.99	9,663.50	58,566.37	8,366.62
0.76	$117,940.31	$126,722.94	$ 95,363.91	$141,090.48	$159,931.44	$164,571.91	$982,641.75	$140,377.39
1.04	996.98	1,384.50	695.16	1,791.20	804.08	1,352.89	9,085.83	1,297.97
8.15	498.48	692.25	289.65	895.60	1,105.61	193.27	4,963.01	709.00
9.19	$ 1,495.44	$ 2,076.75	$ 984.81	$ 2,686.80	$ 1,909.69	$ 1,546.16	$ 14,048.84	$ 2,006.97
0.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	7,000.00	1,000.00
0.00	400.00	400.00	400.00	400.00	400.00	400.00	2,800.00	400.00
0.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	11,500.00	1,642.86
0.00	450.00	450.00	450.00	450.00	450.00	450.00	3,200.00	457.14
0.00	250.00	250.00	250.00	250.00	250.00	250.00	1,700.00	242.86
0.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	49,000.00	7,000.00
0.00	4,000.00	3,500.00	3,000.00	2,500.00	2,000.00	2,000.00	21,500.00	3,071.43
0.00	$ 14,600.00	$ 14,100.00	$ 13,600.00	$ 13,100.00	$ 12,600.00	$ 12,600.00	$ 96,700.00	$ 13,814.29
0.00	17,000.00	13,600.00	$ 13,600.00	$ 13,600.00	$ 13,600.00	$ 13,600.00	$102,680.00	$ 14,668.57
4.00	1,360.00	1,088.00	1,088.00	1,088.00	1,088.00	1,088.00	8,214.00	1,173.43
4.00	$ 18,360.00	$ 14,688.00	$ 14,688.00	$ 14,688.00	$ 14,688.00	$ 14,688.00	$110,894.00	$ 15,842.00
0.00	$ 500.00	$ 400.00	$ 400.00	$ 400.00	$ 400.00	$ 400.00	$ 3,020.00	$ 431.43

[fol. 27d]

SCHEDULE "D" TO AFFIDAVIT

(See Opposite) ☞

Schedule "D" to Affidavit

PACK AND SALES STATISTICS

	1958	1957
AVERAGE SALES PRICE		
Pinks	20.50 to 21.00	23.00
Chums	16.75 to 17.00	18.00 to 19.00
Cohoes	27.00	26.00
Reds	32.00 to 33.00	32.00 to 33.00
PRODUCTION - TRAP AND SEINCE		
Pinks	43,168	27,913
Chums	18,550	21,394
Cohoes	1,512	1,366
Reds	3,335	2,665
	66,565	53,338
Other	2,135	
	68,700	
PRODUCTION - TRAPS ONLY		
Pinks	20,081	5,751
Chums	3,407	1,367
Cohoes	627	413
Reds	1,648	777
	25,763	8,308
SALES VALUE OF TRAP FISH		
Pinks	$ 416,680.75	$ 132,273.00
Chums	57,919.00	25,289.50
Cohoes	16,929.00	10,738.00
Reds	53,560.00	25,252.50
	$ 545,088.75	$ 193,553.00
Selling expense	46,332.54	15,484.24
Net sales value	$ 498,756.21	$ 178,068.76

Schedule "D" to Affidavit

PACK AND SALES STATISTICS

	1958	1957	1956	1955	1954	1953	1952
ES PRICE							
	20.50 to 21.00	23.00	23.00	22.00 to 23.00	20.00 to 22.00	18.00	18.00 to 20.00
	16.75 to 17.00	18.00 to 19.00	21.00	20.00	15 to 16	13.30 to 14.50	16.00
	27.00	26.00	29.00 to 30.00	27.00	24 to 25	19.50 to 21.00	21.00
	32.00 to 33.00	32.00 to 33.00	33.00	32.75	27.50	27.00	27.00
TRAP AND SEINCE							
	43,168	27,913	40,632	30,944	55,800	18,279	24,861
	18,550	21,394	20,437	3,956	15,848	27,644	19,242
	1,512	1,366	1,055	1,072	1,453	1,214	829
	3,335	2,665	1,348	916	1,836	2,846	1,201
	66,565	53,338	63,472	36,888	74,937	49,983	46,133
	2,135						
	68,700						
TRAPS ONLY							
	20,081	5,751	11,814	4,613	20,574	7,154	12,674
	3,407	1,367	985	498	954	1,520	5,527
	627	413	458	420	188	639	615
	1,648	777	583	262	674	738	511
	25,763	8,308	13,845	5,793	22,390	10,051	19,327
OF TRAP FISH							
	$ 416,680.75	$ 132,273.00	$ 271,722.00	$ 103,792.50	$ 432,054.00	$ 128,772.00	$ 240,806.00
	57,919.00	25,289.50	20,685.00	9,960.00	14,787.00	21,280.00	88,432.00
	16,929.00	10,738.00	13,511.00	11,340.00	4,606.00	12,939.75	12,915.00
	53,560.00	25,252.50	19,404.00	8,580.50	18,535.00	19,926.00	13,797.00
	$ 545,088.75	$ 193,553.00	$ 325,322.00	$ 133,673.00	$ 469,982.00	$ 182,917.75	$ 255,950.00
e	46,332.54	15,484.24	26,025.76	10,693.84	34,308.69	13,353.00	28,476.00
e	$ 498,756.21	$ 178,068.76	$ 299,296.24	$ 122,979.18	$ 435.673.31	$ 169,564.75	$ 327,474.00

[fol. 28]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Civil Action File No. 8066-A

[Title omitted]

AFFIDAVIT OF RAYMOND V. HALDANE

State of Alaska)
First Judicial Division) ss:

Raymond V. Haldane, being first duly sworn, on oath, deposes and says as follows:

I am a member of the Metlakatla Indian Community and have been such for forty-seven years. I have served on the Council of the Annette Islands Reserve since 1934, and at the present time, I am the Assistant Secretary of that body.

The 1959 salmon fishing season is due to open on July 13, 1959. Preparatory work on the traps is being performed now and has been for quite some time. Some time [fol. 29] around the weekend of July 4th, we intend to start moving traps into location and setting them in order that they might be fully operable by July 13th. The Annette Island Canning Company, the Metlakatla community cannery, is dependent almost entirely upon trap-caught fish and seine boat fish production. These boats are owned by individual members of the community, the community owns some of them which it fishes on a share basis, and some of the boats are on a "purchase-option" basis. I know of my own experience that without the trap-caught production, our community cannery will be unable to operate profitably. We are this year, and have in past years, made full utilization of our seine boat production. No substantial increase in catch from boat sources can be expected with which to replace lost trap production. The argument has been made that if these traps are eliminated from our reservation waters that the seine boats will be able to catch more fish. This is a fallacious argument and is extremely unsound.

One of the reasons for my so stating is that, with the elimination of traps elsewhere in Alaska, "outside" seine boats are coming to Alaska in tremendous numbers and they will effectively eliminate any surplus fish which might be available by the elimination of our traps, although, I cannot subscribe to the theory that the absence of traps necessarily means a greater catch for seine boats.

The Annette Island Canning Company is maintained and operated exclusively for the benefit of the Metlakatlan people. Their economic welfare, to an unparalleled degree, depends exclusively upon the cannery operation.

At the present time, Metlakatla owes the Rural Electric Administration the sum of $1,578,781.59 (as of June 18, 1959). Interest on the principal amounts to approximately $26,000.00 annually. Under the terms of our repayment schedule with the REA, we pay approximately $15,000.00 to $16,000.00 quarterly which includes interest. Under the terms of our loan with the REA, the first $75,000.00 of profits which are available are retained by the community. The next $72,000.00 must be paid to the REA. The excess profits, if any, are given to the community which, in turn, gives most of the excess to the Bureau of Indian Affairs and the United States Treasury where it is held in trust for the community. The Council, when it desires access to the funds thus held for it in trust, passes an ordinance, and if the ordinance is approved by the Bureau of Indian Affairs, the money is returned to us for disbursement pursuant to the purposes specified in the ordinance.

The community is also obligated to repay to the Bureau of Indian Affairs $210,000.00. Annual installments in the amount of $25,000.00 must be made. This indebtedness arises out of the revolving boat fund loan and repayment is secured by boat mortgages and mortgages on the cannery buildings and income. To some extent this fund is self-supporting, but in the event it doesn't make $25,000.00 in any one year, so much of the profits as are necessary are added to the balance in the fund to raise the sum of $25,000.00.

[fol. 30] We have eight trap sites on Annette Island. According to the order of Secretary Seaton of early March of this year, we are allowed to utilize fifty (50%) per cent

of the available trap sites. It is our intention to install traps on trap sites No. 3, 4, 6, and 8. Without the operation of these traps, our primary source of income, the life blood of our community will stop flowing. It would become, literally, a community ghost town. Without traps, we would become absolutely dependent as a community and as individuals upon the State of Alaska, or the United States of America. Most of our people would go on welfare, and we would become wards of the government in the literal sense of the word.

We usually have about twenty men engaged in pre-season work on traps alone with an average annual payroll of approximately $30,000.00. The payroll for pre-season work done on the cannery proper amounts to approximately another $30,000.00 annually. The labor performed in the cannery by residents of our community, during the actual season itself, is in excess of $100,000.00. Most of this money is made by female members of the community, and it goes toward the acquisition of clothing and food, etc., for the winter months. If these people did not have a chance to make these wages in the cannery, it is safe to state that there is no place else that they could make it.

From my many years of experience with town affairs and from my intimate knowledge of the cannery operation, I can safely state that without the trap-caught production, we would be forced to curtail the cannery operation in its entirety. Without the operation of the cannery, and the wealth it creates for our community, our people would seriously suffer, to such an extent that we would be little more than an isolated native village, living on a dole, and without hope for the future. Our present achievements and desirable standard of living would go by the board and our model community, as it exists today, would be a thing of the past.

I was present in Metlakatla on June 13, 1959, when Governor William Egan spoke to the members of the Metlakatla Indian Community at the Town Hall. The Governor stated that he was under obligation to the voters of Alaska to see that no traps were operated in the coastal waters of Alaska. I gathered from what he said that he felt a deep

sense of obligation to enforce the laws no matter how much Metlakatla suffered thereby. The general tenor of his remarks was such that I rose to my feet and asked him this question: "Would you insist on total elimination of the traps even if it meant economic ruin of the Metlakatlan people for generations to come?" His answer was, in effect, that the laws of the State of Alaska would be enforced, inasmuch as he had the sworn duty to enforce them.

[fol. 31] At another point in the discussion, he was asked how he proposed to enforce these laws. He stated, in words to this effect, that he "assumed that the State policy would be to send in State officers on the traps to make arrests and confiscate the fishing gear." To do this, of course, the State Police or whoever came upon our reservation, would have to commit trespass upon our properties. In addition to these specific threats that were made to my people on June 13, 1959, I am informed and believe that arrests have been made of other natives, from other native villages to the northward, who were engaged in pre-season trap preparation. It is also my understanding that at least one trap has been confiscated, and I am firmly convinced that if the State of Alaska, its Governor, and the law enforcement officers, are not forbidden to do these things in connection with our traps, that a like course of action will be exhibited in the near future.

Dated at Ketchikan, Alaska, this 19th day of June, 1959.

Raymond V. Haldane

Subscribed and sworn to before me this 19th day of June, 1959.

Ruth E. Brown, Notary Public for Alaska, My commission expires: 9/18/60.

[fol. 32]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Civil Action File No. 8066-A

[Title omitted]

AFFIDAVIT OF HENRY J. DUNCAN

State of Alaska)
First Judicial Division) ss:

Henry J. Duncan, being first duly sworn, on oath, deposes and says as follows:

Like Raymond Haldane, I am a member of the Metlakatla Indian Community. I have resided there for twenty-one years and have served sixteen years on the Council. At present, I am the Treasurer of the Metlakatla Indian Community and a boat owner.

In my official capacity I am fully aware of the financial structure of the Metlakatla Indian Community. In addition to the $75,000.00 retained from the first profits by the community and the REA and Bureau of Indian Affairs revolving boat fund loans requiring repayments, twenty (20%) [fol. 33] per cent of the total net profit is first earmarked for application on indebtedness incurred by the cannery in its disaster operations in 1952 and 1953. There is considerable doubt as to what priority prevails among our creditors, but, suffice it to say, twenty (20%) per cent of the available net profit goes toward retiring heretofore incurred cannery indebtedness, $75,000.00 of the remaining eighty (80%) per cent of net profit to the community, $72,000.00 then to the REA and contingent amounts to the revolving boat fund. Moreover the Council is authorized to withhold, and often does, such sum or sums of money as it deems necessary for cannery replacements or repairs before depositing the remaining net profits, if any, with the Bureau of Indian Affairs.

I, too, was present at Metlakatla when Governor Egan threatened to send State Police into our waters and to

arrest our citizens and confiscate our traps, if we attempted to use traps. In view of what he said then, and in view of what has transpired recently near Kake and Angoon, I believe that the State of Alaska intends, beyond the shadow of a doubt, to move in on our operation in such a manner and at such a time as to prevent our utilizing our traps during the 1959 season, which course of action would cause us great, immediate and irreparable injury.

In such an event, I can state that Metlakatla is doomed. The statistics clearly show that we cannot run our cannery at a profit without trap-caught fish, and it follows that if our cannery falls by the wayside, so, consequently, will our community and its peoples.

Dated at Ketchikan, Alaska, this 19th day of June, 1959.

Henry J. Duncan

Subscribed and sworn to before me this 19th day of June, 1959.

Ruth E. Brown, Notary Public for Alaska, My commission expires: 9/18/60.

[fol. 34]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Civil Action File No. 8066-A

[Title omitted]

AFFIDAVIT OF HENRY S. LITTLEFIELD

State of Alaska)
First Judicial Division) ss:

Henry S. Littlefield, being first duly sworn, on oath, deposes and says:

I am Mayor of the Metlakatla Indian Community, Metlakatla, Alaska; that the Community constitutes an Indian Reservation with a population of Indians of approximately 1000 inhabitants; that our ancestors settled on Annette

Island in the year 1887, having come from Canada at the invitation by and the permission of the United States; that they migrated to Alaska to escape persecution in their former settlement in Canada; that by Act of Congress in March, 1891, Annette Island was set aside as an Indian Reservation for the Metlakatla Indians; that by virtue of [fol. 35] a Presidential Proclamation issued in April, 1916, the waters surrounding Annette Island, to the extent of 3000 feet, were set aside as a fishery right for the exclusive use and benefit of the inhabitants of the reservation; that no restriction was ever made as to the manner in which said fishery right was to be exercised; that the United States as Guardian and Trustee of the Metlakatlans, its wards, has continually protected the Reservation, including the waters belonging thereto, from encroachment by others who attempted to intrude on said waters and to carry therein fishing operations.

That as a result of the creation of said Reservation, the inhabitants thereof have attained a high state of civilization; and, until the decrease in the salmon runs, have been able to realize from a salmon cannery owned and operated by the community, funds with which to educate their children and maintain a good state of health, and economic well being among our people.

That the affairs of the community are administered by a mayor and common council elected by the people, under a constitution and set of by-laws voted upon and approved by the inhabitants and approved by the Secretary of the Interior of the United States.

That Annette Island and the surrounding waters have been adjudicated by the Courts, including the Supreme Court of the United States, as an Indian Reservation; that the Guardian and Trustee for them is the United States, and the inhabitants have been judicially decided to be wards of the United States and entitled to the full protection of the Federal Government.

That the Annette Island and surrounding waters are Federal property; that the United States is the sole owner thereof and has never surrendered its ownership or control over or permitted anyone to interfere with the said Reservation.

That the salmon cannery, boats, fishing gear and fishing rights have been judicially determined to be instrumentalities of the United States.

That the economic welfare and prosperity of the community is entirely dependent upon the successful operation of its salmon cannery; that without the use of its fish traps the cannery can not be operated profitably; that the community has incurred an indebtedness to the United States in approximately the sum of two million dollars; that such indebtedness consists of loans for the construction and operation of a hydro-electric system and boat loans for the members of the reservation; that in order to secure said loans it was necessary to assure the federal government that the loans could be repaid from the operation of its [fol. 36] salmon cannery; that the profits from the said cannery have been pledged to the United States as security for the payment of said loans; that without the operation of said fish traps the loans cannot be repaid which will result in economic disaster to the inhabitants and a loss to the federal government.

That the purpose in seeking ban on the use of fish traps in Alaska was to conserve the runs of salmon; that the use and operation of the four fish traps of the community will in but a very minor manner, if any, affect the conservation of salmon in Alaska waters; that the State of Alaska will not suffer any material damage if the traps are permitted to be operated, while on the other hand, if the Indians of the reservation are denied the right they will suffer irreparable damage and loss.

Henry S. Littlefield

Subscribed and sworn to before me this 19th day of June, 1959.

A. H. Ziegler, Notary Public for Alaska, My commission expires: Sept. 9, 1959.

[fol. 38]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Civil Action File No. 8066-A

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION

Comes now the plaintiff, by counsel, Ziegler, Ziegler & Cloudy, and moves the Court for a preliminary injunction in the above entitled cause enjoining defendants, William A. Egan, and The State of Alaska, their officials, agents, servants and employees from interfering in any manner with the right of the plaintiff to erect, moor, maintain, operate, and fish floating fish traps of the type allowed by the Secretary of the Interior of the United States of America at the following sites:

[fol. 39] 1. Annette No. 3, located at 55°02'47" North lat., 131°38'53" West long.

2. Annette No. 4, located at 55°05'41" North lat., 131°36'39" West long.

3. Annette No. 6, located at 55°00'45" North lat., 131°38'30" West long., and

4. Annette No. 8, located at 55°10'13" North lat., 131°19'31" West long.

and that they be enjoined from in any manner attempting to enforce the provisions of 17 SLA 1959, or the provisions of any other law of the State of Alaska so as to prevent the plaintiff from operating said traps or so as to punish or penalize or prosecute plaintiff, its employees, agents or members for operating fish traps as above described, and that defendants be enjoined from invading, or trespassing on, plaintiff's reservation to accomplish these purposes.

The grounds in support of this motion are as follows: Immediate and irreparable injury, loss or damage will result to the plaintiff, as appears by the verified complaint on file herein, in that defendants will trespass upon plaintiff's

reservation to arrest its members and to confiscate its trap gear, and in that the threatened wrongful conduct of the defendants will deprive plaintiff of its ownership of four fully equipped floating fish traps and all of the salmon those traps would catch during the 1959 salmon fishing season, and subject plaintiff's employees to arrest and prosecution and in so doing cause the shutdown, partial or complete, of plaintiff's 1959 cannery operations thereby depriving the members of the plaintiff from employment, the fishermen [fol. 40] of the plaintiff of a market, and the members of the plaintiff from the benefits through profits that would otherwise accrue to them from the operation of said cannery and traps, and that said injury and harm is irreparable because no action at law will lie against the State of Alaska for the damages accruing thereby and the loss will be forever nonrecoverable to the plaintiff, and even assuming money damages were recoverable the loss to the social and economic welfare of the plaintiff and its members through the loss of property as described and in the loss of profits the amount of which depends upon the size of the salmon run, are not measurable in money now or hereafter.

Unless restrained, Defendants William A. Egan and The State of Alaska, and their agents will make seizures and arrests of the plaintiff and the plaintiff's agents, employees and members and seize the fish traps of the plaintiff and prevent them from being fished in accordance with the laws of the United States, and that to accomplish these things, defendants will necessarily have to trespass upon plaintiff's reservation.

Immediate and irreparable injury, loss or damage will result to the plaintiff by reason of the threatened action of the defendants, as more particularly appears in the verified complaint filed herein. The plaintiff has no adequate remedy at law.

If this preliminary injunction be granted, the injury, if any, to the defendants herein, if final judgment be in their favor, will be inconsiderable and will be adequately indemnified by bond.

Ziegler, Ziegler & Cloudy, Counsel for the Plaintiff, Box 1079, Ketchikan, Alaska, By [Signature illegible], Of Counsel.

[fol. 41]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action No. 8066-A

[Title omitted]

MOTION TO DISMISS

Comes now the defendant, Governor of Alaska, through his attorney, the Attorney General, and moves this Court to dismiss the cause herein on the ground that the complaint fails to state a claim upon which relief may be granted.

1. The situs of all places here involved is within Inland waters of Alaska or on tidelands of Alaska over which the State has, in this instance, exclusive jurisdiction.

2. Plaintiff has no property right in a fish trap location.

3. The State of Alaska has authority to prohibit fish traps for use in commercial fishing.

[fol. 42] 4. The Constitution of Alaska, prohibiting fish traps without exception, has amended the White Act, 48 U.S.C.A. 221 et seq.

5. Regulation 115.26, Revised Regulations of 1959, promulgated by the Secretary of the Interior, Fred A. Seaton, is invalid.

a. Creates a discrimination not permitted under the White Act.

b. Conflicts with the Constitution of Alaska.

And for such other reasons as may appear from the memorandum to be filed herein and made a part of this motion.

Dated at Juneau, Alaska, this 25th day of June, 1959.

John L. Rader, Attorney General of Alaska, By James M. Fitzgerald, Special Assistant Attorney General.

[fol. 43]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DISTRICT NO. ONE AT JUNEAU

AFFIDAVIT OF WALTER KIRKNESS

State of Alaska)
Division Number One) ss:

I, Walter Kirkness, being first duly sworn, on oath depose and say that I make the following affidavit of my own knowledge and the facts are true:

1. That I am the Senior Biologist in the Commercial Fisheries Division, Alaska Department of Fish and Game, and have been employed by that department for nine years in the Territory and now the State of Alaska.

2. That I am familiar with the trap sites of the Angoon and Kake communities as described in their complaints filed herein; that the fish which would normally supply the catch for said traps are migratory and destined for many parts of Southeastern Alaska to rivers and streams, some many miles away from the trap sites; that therefore any fish which would escape the traps or which are conversely caught in the traps are respectively available or not to other fishermen of Alaska who are prohibited the use of fish traps, and, in the event they are not caught, represent the escapement for spawning to provide for future runs.

3. That the plaintiffs' allegations of irreparable damage and loss of a given per cent of fish for their cannery purposes is in some respects speculative, due to the following facts:

a. In past years, approximately 25 to 61 per cent of the fish caught in Southeastern Alaska were caught in fish traps, the type which are now generally prohibited except for those of the plaintiffs herein and four additional traps located near Metlakatla; that in the past there were a total of from 113 to 262 traps fishing in the area generally known as Southeastern Alaska; that due to the fact that all but a very small number of these traps admittedly will not be fishing, it is only reasonable to anticipate, and in my professional judgment I do reasonably expect, that the

catch per seine boat will increase substantially over that of previous years.

b. In addition to the foregoing, which indicates an increased efficiency and productiveness of seine boats, the [fol. 44] Federal Fish and Wildlife regulations at this time permit fishing at all times except from 6:00 P.M. Friday to the following 6:00 A.M. Monday during the season; that in the event that there is more escapement than reasonably determined necessary for spawning, it is quite probable that the regulations will be extended to permit approximately 24 hours more fishing per week per boat. Mathematically, this will increase in excess of 20 per cent the fishing time of each boat.

4. That neither this affiant nor the plaintiffs can say with certainty what the increased productivity of the seine boats may or may not be, due to the factors above-said and due to the further fact of the cyclical nature of the runs which cannot be determined in advance with precise accuracy, but rather must be estimated, based upon available statistical and other information from previous years. In view of the foregoing, the amount of damage to plaintiffs from not using their traps is speculative.

5. In addition to the foregoing, the plaintiffs can, if they desire, bid against other canneries in Southeastern Alaska for independent seine boat catches and thereby acquire additional fish, depending upon the amount bid as compared with other canneries; that because of the competition of the market, affiant states that the increased cost of such bidding by plaintiffs will be regulated by normal principles of competition in the market place.

Further, affiant sayeth not.

Dated at Juneau, Alaska, this 23rd day of June, 1959.

Walter Kirkness

Subscribed and sworn to before me this 23rd day of June, 1959.

Helen T. Monsen, My commission expires May 2, 1962.

Copy received 6-23-59, R. L. Jernberg.

[fol. 45]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DISTRICT NO. ONE AT JUNEAU

No. 8063

ORGANIZED VILLAGE OF KAKE, Plaintiff,

—v.—

WILLIAM A. EGAN, GOVERNOR OF THE STATE OF ALASKA, Defendant.

No. 8064

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

—vs.—

WILLIAM A. EGAN, GOVERNOR OF THE STATE OF ALASKA, Defendant.

AFFIDAVIT OF HAAKON B. FRIELE

Haakon B. Friele, being first duly sworn, on oath, deposes and says:

That he has been actively engaged in the Alaska salmon canning industry since 1916, and has been the managing officer of the Nakat Packing Corporation and its predecessor, which has been one of the principal companies in the catching and packing of Alaska salmon since 1922.

That affiant has conducted fishing operations during all of this time in Southeastern Alaska, utilizing both seine caught fish and trap caught fish, and is fully familiar with all aspects of the fishing industry as it exists in that area. Affiant has been requested to explain for the purposes of this proceeding the reason for the closure of some canneries and the plans for reduced production in others,

[fol. 46] which affiant states herein without in any manner taking sides with either party in the above entitled lawsuit.

The Nakat Packing Corporation is the owner of two canneries located in Southeastern Alaska, near Ketchikan, which operated in 1958. One of these canneries is called Waterfall, and the other is called Sunny Point. The two canneries produced a total of 146,689 cases of salmon worth $3,280,071.00. Of this pack, 44,700 cases worth $1,012,055.00 were obtained from purse seine vessels and 101,989 cases valued at $2,268,016.00 were supplied by traps. The traps therefore supplied approximately two-thirds of the total production of these two canneries.

With the loss of the fish obtained from traps, the Nakat Packing Corporation was forced to close the Sunny Point Cannery and operate the Waterfall cannery on a reduced basis, although this company will make every effort to utilize all of the seine boats it has utilized in the past, and any additional seine boats from which it can purchase fish.

In estimating the amount of production which could be expected from seine boats in Southeastern, the following factors were considered:

1. *Size of Run.*

The production in Southeastern for the last five years, as reported by the Final Report of the United States Fish and Wildlife Service for 1958, has been as follows:

1954	1,312,112 cases
1955	839,752 cases
1956	1,049,174 cases
1957	910,394 cases
1958	1,194,047 cases

[fol. 47] Approximately two-thirds of this run consists of pink salmon, and estimates of the total run for each year are based largely on the pink salmon expectation. The progress report on Alaska fisheries management and research for 1958, prepared by the United States Fish and Wildlife Service on page 8 states:

"Considering the data afforded by the three indices used in predicting the magnitude of the pink salmon

run; i.e., escapement, fry enumeration, and fingerling enumeration, it is anticipated that the size of the 1959 pink salmon run in Southeastern Alaska will be between those of 1957 and 1958."

This prediction would make the 1959 run somewhat better than 1955, 1956 and 1957, but not quite as good as 1954 and 1958.

2. *Increase of seine catch in absence of traps.*

In the past, seine boats have accounted for not more than 40% of the total production in Southeastern Alaska, notwithstanding that every effort has been made to increase the catch of seine boats and to utilize all boats available. If the total catch of all seine boats was increased 25% per boat, this increase would still make up only 10% of the 60% lost trap production. It is unlikely that the seine boat production would increase more than this amount. Of course, some fish which would have been caught by traps will this year be caught by seine boats, but most of this fish will escape because the available seine boats cannot fish effectively enough or cover enough area to catch the remaining fish.

[fol. 48] 3. *Extension of fishing time per week.*

In 1958, the seine fishing effort was permitted for five days per week from Monday through Friday. Under Federal law (White Act, 48 USC Sec. 234), Sunday is closed permanently to all commercial gear. It may be that the Fish and Wildlife Service could extend the weekly fishing period by one day through Saturday. However, fishing experience establishes that the catches are best on Monday and decline steadily to the end of the week, disregarding increase or decrease in the runs. On the average, Friday would supply only about 10% of the week's total catch, and presumably the decline would continue on Saturday. Fishing on Saturday therefore would make no significant contribution to increasing the total production. The reason for this decline in fishing efficiency during the week is that

the fish tend to school when fishing is suspended over the week end, and disband upon the commencement of fishing on Monday.

4. *Opening additional areas.*

The opening of additional areas would not be a great contributing factor in increasing seine production unless the number of seine boats was increased to utilize the new areas opened. There is no prospect of a substantial increase in the number of these boats in 1959, and the distribution of boats available is entirely unpredictable.

5. *Construction of new seine boats.*

It is possible to increase the number of seine boats to replace lost trap production, but this can only be done over a period of several years and assuming the [fol. 49] capital investment is available. It would require an average of at least two modern purse seine vessels, costing well over $100,000 for the two, to replace one average trap. There is the further problem of adequately training crews with sufficient skill to economically and safely operate the vessels. There is a shortage of qualified seine boat fishermen and masters, and it will take a concerted effort and several years of training to alleviate this shortage.

6. *Purchasing fish from independent boats.*

The economics of operating a purse seine vessel have been such that practically all owners of such vessels have financing agreements with particular canneries, whereby they agree to sell all of their fish supply to their cannery in exchange for being financed throughout the winter and from year to year in their fishing effort. As a result, less than 5% of the seine fleet are truly independent and free to sell their fish to whomever they like. Although it is true that the price of fish may fluctuate, and a person offering a higher price might for the period of a day obtain a greater supply, the increased price would be quickly met by the other packers and the status quo maintained, unless the price were so high as to be ruinous to the cannery offering it.

Consideration of the foregoing factors resulted in the conclusion of salmon cannery operators that the production in Southeastern would be reduced to about one-half, as a result of which the following canneries, representing approximately 25% of the total production in Southeastern [fol. 50] for 1958, will be closed:

George Inlet
Fidalgo Island
Sunny Point
Wrangell
Douglas

In addition, the remaining canneries of New England at Ketchikan, Ward's Cove, Waterfall, Pacific American Fisheries at Petersburg, Kahler-Dahl at Petersburg, New England Fish Company at Chatham, Hawk Inlet, Pelican and Excursion Inlet, will all be geared to operate well under last year's operation.

Haakon B. Friele

Subscribed and sworn to before me this 25 day of June, 1959.

[Signature illegible], Notary Public in and for the State of Washington, residing at Seattle.

[fol. 51]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DISTRICT NO. ONE AT JUNEAU

No. 8063

ORGANIZED VILLAGE OF KAKE, Plaintiff,

—v.—

WILLIAM A. EGAN, GOVERNOR OF THE STATE OF ALASKA, Defendant.

No. 8064

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

—vs.—

WILLIAM A. EGAN, GOVERNOR OF THE STATE OF ALASKA, Defendant.

AFFIDAVIT OF CLARENCE D. PAYNE

State of Washington)
County of King) ss:

Clarence D. Payne, being first duly sworn, on oath, deposes and says:

That I first came to Alaska and engaged in the fishing business in 1913 at the age of twenty-six and was employed in trolling and seine boat fishing. In 1920, I obtained my first trap site, and in 1935 I became part owner of a salmon cannery, and continued as a cannery operator, with some interruption during World War II, until 1958. That during the entire period from 1913 to 1958, I have been actively engaged in all aspects of the Alaska salmon catching and

canning industry, and I am entirely familiar with its present situation and past history, particularly in Southeastern Alaska where my canneries were located and the greatest part of my activities conducted.

[fol. 52] The value of my cannery at Ketchikan was established in 1958 for tax purposes in a judicial proceeding by the above entitled Court at $533,000. With the loss of my trap sites, I can no longer continue in business and have sold the cannery for $75,000 this year. Although since 1954, due to the reduction in fishing effort, I have operated in a joint venture with Ward's Cove Packing Company, and have not operated my own cannery, I was nevertheless optimistic that with the increasing fish supply, it would again be operated. However, with the loss of traps, I not only lost all opportunity of ever again operating my own cannery, but was also thrown completely out of the salmon business, even on a joint venture basis with Ward's Cove Packing Company. The reason is that all of my fish had been supplied from my fish traps, and with the sudden abolishment of fish traps without warning in 1959, inventory of trap equipment, boats and other gear of over $200,000 was destroyed, subject to very questionable salvage value. This left me without the finances to even attempt to build up a purse seine fleet to substitute for the lost trap production.

Furthermore, there are no purse seine boats generally available, as ninety-five percent of all existing boats are tied up with financial arrangements with canneries under which, in exchange for financing and other assistance, the boats supply all of their fish to their financing cannery.

In the past, trap caught fish have uniformly accounted for over sixty percent of the salmon pack, and this was approximately true in 1958. The remaining forty percent of the pack was supplied by purse seine vessels. If these vessels increase their catch by as much as twenty-five percent, which would be more than the best estimates of [fol. 53] those familiar with the business, it would still only increase the total seine catch to fifty percent of the 1958 total production. As only five percent of this total seine catch is completely independent, there is simply not enough

independent fish for anyone who does not have his own purse seine fleet to acquire and run a cannery or participate with other canners.

If a person could afford to substantially raise the price offered the seine boats, he might get some extra fish for a day, but the other packers would meet the price and the original purchaser would be back where he started, without a supply of fish.

It is roughly estimated that it will require approximately $150,000 in investment in seine boats to replace the production of one trap. As my company owned and operated five traps, it would require $750,000 to replace the capacity of these traps with seine boats. It would also require a period of several years to build and equip the boats, and obtain or train crews sufficiently skilled to fish the boats and make it pay. As I did not have that kind of money available, and as I could not finance myself in any event over the intervening years while developing this production, I had no choice but to sell my entire plant and equipment for mere salvage value. Libby, McNeill & Libby also sold all of its Alaska investment in cannery plants and equipment because it was not economic for it to make the transition to a seine fish operation under the circumstances.

As of this time, the following canneries which operated last year in Southeastern Alaska will not operate in 1959:

George Inlet Cannery
Fidalgo Island Cannery
Sunny Point Cannery
Wrangell Cannery
Douglas Cannery

[fol. 54] These canneries represent over 25 percent in productive capacity of the total Southeastern pack. The remaining canneries which are operating are doing so on a limited basis. This sharply reduced operation is based on the unanimous expectation of the various cannery operators that the 1959 Southeastern purse seine fleet will not supply more than fifty percent at best of the 1958 fish production,

although the Southeastern salmon run in 1959 is expected to be almost as good as 1958.

Clarence D. Payne

Subscribed and sworn to before me this 25th day of June, 1959.

Virginia Coleman, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 173]

In the District Court for the District of Alaska

Division Number One, at Juneau

Causes 8063-A and 8064-A

Affidavit of Alf Erickson

I am an independent seine vessel owner and as such I am free to sell my catch to any cannery I choose, one of the prime factors in my selection being the price paid for my fish.

Alf Erickson

Subscribed and sworn to before me at Wrangell Alaska this 24th day of June 1959.

Arthur B. Nelson

[fol. 174]

In the District Court for the District of Alaska

Division Number One, at Juneau

Causes 8063-A and 8064-A

Affidavit of Neil Grant

I am an independent seine vessel owner and as such I am free to sell my catch to any cannery I choose, one of the prime factors in my selection being the price paid for my fish.

Neil Grant

Subscribed and sworn to before me at Wrangell Alaska this 24th day of June 1959.

Arthur B. Nelson

[fol. 175]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Causes 8063-A and 8064-A

AFFIDAVIT OF HAROLD MARTINDALE

I am an independent seine vessel owner and as such I am free to sell my catch to any cannery I choose, one of the prime factors in my selection being the price paid for my fish.

Harold Martindale

Subscribed and sworn to before me at Wrangell Alaska this 24th day of June 1959.

Arthur B. Nelson

[fol. 176]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Causes 8063-A and 8064-A

AFFIDAVIT OF WILLIAM E. SMITH

I am an independent seine vessel owner and as such I am free to sell my catch to any cannery I choose, one of the prime factors in my selection being the price paid for my fish.

William E. Smith

Subscribed and sworn to before me at Wrangell Alaska this 24th day of June 1959.

Arthur B. Nelson

[fol. 177]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Causes 8063-A and 8064-A

AFFIDAVIT OF PETERSBURG FISHING VESSEL OWNERS' COOPERATIVE

Petersburg, Alaska

June 25, 1959

ER K. SATHER	ZAREMBO	WALTER HOFSTAD	B & H
LIVER HOFSTAD	SARAH MARIA	ANDREW GJERDE	HAPPY
ILLIAM LOVE	REX	JACK O'DONNELL	ALASKA MAID
ELS OTNESS	SEANNA	FRED MAGIL	ELIZABETH
ABOLD SISSON	LORELEI	ERIC FUGELVOG	BALDER
OWARD CONN	ROSCO 1	KURT NORDGREN	LOIS W
NDY WIKAN	CURLEW	GORDON JENSEN	SYMPHONY
HIRS ODEGAARD	THOR	LEONARD MARTENS	LOUI M
EIF STROMDAHL	ASTRID	PETER PHILBIN	PROGRESS
OHN R. OTNESS	TEDDY J	LLOYD PEDERSON	MIDDELTON
EO NESS	LIBBY 8	PHILLIP CLAUSEN	HORNET
RLING ESPESETH	BRAVO	A. H. GJERDE	MIDWAY
RIL MATHISEN	LENOR	NORMAN TATE	SURF
. TAGABAN	GJOA	RAY THOMASSEN	SHIRLEY
. ADOLPH MATHISEN	HARMONY	MAGNUS MARTENS	PAMELA RAE
AM IDEM	MISS NORMA	ERNEST ENGE	AUGUSTA
RED HALTINER	VERMA	NELS EVENS	IRA 11
ASPER HALLINGSTAD, SR	BROOKLYN	SAPSER HALLINGSTAD, JR	RAVEN
SCAR SANDVIK	MUNROE	DICK BIRCH	LE CONTE
AUL OLSEN	TORUN	ALVIN FREDRICKSEN	WHIDBY
NDREW HANSON	SOKOL		

The above 41 seine vessels are independent and as such are free to sell their catch to any cannery they choose, one of the prime factors in their selection being the price paid for fish.

Andy Wikan, President.

[fol. 178]

Causes 8063-A and 8064-A

AFFIDAVIT OF PETERSBURG FISHING VESSEL OWNERS' COOPERATIVE

United States of America)
State of Alaska) ss:

I, Vernon A. Counter, Notary Public in and for the State of Alaska, duly sworn and commissioned, do hereby certify that on this 25th day of June, 1959, personally appeared before me Andy Wikan, to me known to be the President of the Petersburg Fishing Vessels Owners Cooperative, a corporation organized under the laws of the State of Alaska, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given Under My Hand and Official Seal this 25th day of June, 1959.

Vernon A. Counter, U.S. Commissioner and Ex-Officio Notary Public, Petersburg Precinct, State of Alaska.

[fol. 179]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

No. 8063-A

THE ORGANIZED VILLAGE OF KAKE, ALASKA, Plaintiff,

—vs.—

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

No. 8064-A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

—vs.—

WILLIAM A. EGAN, as Governor of the State of Alaska, Defendant.

No. 8066-A

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLANDS RESERVE, A Federally Chartered Corporation, Plaintiff,

—vs.—

WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, Defendants.

REPORTER'S TRANSCRIPT OF EXTRACT OF PROCEEDINGS—
June 29, 1959

On the 29th day of June, 1959, court having convened at 9:30 o'clock a.m., at Juneau, Alaska, the first two of the above-entitled causes came on for hearing; the Honorable Raymond J. Kelly, United States District Judge, presiding; and the following is an extract of the proceedings:

[fol. 180] The Court: Before you go into that, before you go into your argument, in view of the statement made by the counsel for the Governor, I think it might be well to state what this Court feels is the general proposition that we should face. This is an interim court during the transition of the judicial system from the Territorial to the State status. As far as the State Act is concerned, we enjoy a dual personality. Whatever might be said in reference to the Federal end of it, there certainly seems to be no question at this time but what we are acting as a State Court.

Now, I believe it is well recognized that the exercise by a state of the Union of a lawful power vested in it is not

subject to judicial supervision. Those are matters that we are going to determine as we go along. It has even been held that rights guaranteed by the Constitution are subject to the imposition of states' standards which are not discriminatory and which do not contravene any restrictions that Congress, acting pursuant to its Constitutional powers, has imposed.

In reference to our jurisdiction, litigants asserting Federal rights as a basis of a claim or as a defense to a claim under state law may do so in state courts which must recognize and protect the Federal rights. There is a duty resting upon state as well as Federal Courts to protect and enforce rights lawfully created without reference to the particular government from whose exercise of lawful power the rights arose. Litigants resting on a Federal right need not resort to Federal Courts to protect those rights where such rights are put in jeopardy in state proceedings.

While Congress has granted to District Courts jurisdic-[fol. 181] tion over cases arising under the Constitution, that is 28 U.S. Code Sec. 1331, that that jurisdiction need not be exercised where it would be appositive of state action and lead to needless interference with state agencies, it likewise need not be exercised where the resolution of state law questions which are complex or unsettled may make it necessary to reach a Federal Constitutional question.

It seems to be well-established procedure, aimed at the avoidance of unnecessary interference by the Federal Courts with proper and validly administered state concerns, to afford state courts a reasonable opportunity to construe state statutes. Federal Courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them.

The Supreme Court has increasingly recognized the wisdom of staying actions in the Federal Courts pending determination by a state court of decisive issues of state law, and, in fact, they have even required United States District Courts to stay their proceedings pending the submission of the state law question to state determination.

I just wanted to put that in the record so as to indicate it is my feeling that we are on perfectly solid ground.

[fol. 182]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE, AT JUNEAU

Consolidated Civil Cases Nos. 8063 and 8064-A

THE ORGANIZED VILLAGE OF KAKE, ALASKA, Appellant,

—vs.—

WILLIAM A. EGAN, as Governor of the State of Alaska, Appellee.

ANGOON COMMUNITY ASSOCIATION, Appellant,

—vs.—

WILLIAM A. EGAN, as Governor of the State of Alaska, Appellee.

Civil Cause No. 8066-A

Combined with the above two Civil cases on Appeal.

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, a Federally Chartered Corporation, Appellant,

—vs.—

WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, Appellee.

EXTRACT OF REPORTER'S TRANSCRIPT OF PROCEEDINGS ON JULY 1, 1959, CONTAINING APPELLANTS' ORAL NOTICE OF APPEAL

Extract as Reflected on Page 12 of the Reporter's Transcript.

"Mr. Jernberg: If the Court please, on behalf of Angoon and Kake we now give notice of appeal and ask

that the record so show, and we will file a formal notice a little later on today. We also would like to ask the Court and counsel if they would stipulate that the original record may be transferred by the Clerk of this Court to the Clerk of the Supreme Court of the United States.

Mr. Robert H. Ziegler: Your Honor, may Mr. Jernberg's remarks be deemed applicable to the Metlakatla case, No. 8066-A.

The Court: Certainly. The opinion applies to both."

[fol. 183]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action No. 8063-A

ORGANIZED VILLAGE OF KAKE, Plaintiff,

—v.—

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

Civil Action No. 8064-A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

—v.—

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

Civil Action No. 8066-A

—and—

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLANDS RESERVE, a federally chartered corporation, Plaintiff,

—v.—

WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, Defendants.

R. L. Jernberg, of Gore & Jernberg, Ketchikan, and C. L. Cloudy, of Ziegler, Ziegler & Cloudy, Ketchikan, for plaintiffs Organized Village of Kake and Angoon Community Association.

Robert H. Ziegler, Sr., and A. H. Ziegler, of Ziegler, Ziegler & Cloudy, Ketchikan, for plaintiff Metlakatla Indian Community, Annette Islands Reserve.

John L. Rader, Attorney General of Alaska, James M. Fitzgerald, Special Assistant Attorney General, and Douglas L. Gregg, Assistant Attorney General, for defendants.

OPINION—Filed July 1, 1959

Kelly, Judge.

The first two captioned cases were consolidated for trial, and the third was heard the following day. Because of the similarity of the actions, the three cases are consolidated for the purpose of this opinion.

[fol. 184] The urgency of this matter makes immediate determination imperative. It would, of course, be desirable if my decision could be based on a written opinion as complete as the able briefs of counsel for both parties filed herein, but time does not permit the preparation of a formal opinion, so it must suffice that I announce my decision from the bench and do as well as possible from notes and excerpts from decisions.

I need hardly state that I agree with counsel on both sides in their expressed regard for the importance of this action now before us for decision.

We have here a conflict between the authority of the Secretary of the Interior, an officer of the United States, and the Governor of Alaska. In this it is not a conflict of these officials as individuals or personalities, but of what they represent in this controversy.

We have in effect the state opposed to the United States.

We have the majesty of the nation on one hand and the sovereignty of the state on the other; in between, three Indian communities whose plight in the dwindling fish economy of Alaska is a matter of grave concern.

Where the exercise of claimed state power and authority collides with the exercise of claimed federal power and authority, the difficult and tender problem of resolving, under existing law and judicial decisions, the question thus arising, with due regard to the dignity of the one and the sovereignty of the other, becomes the delicate task of the Court.

Able and convincing arguments have been capably presented by counsel for both sides.

[fol. 185] The facts are substantially agreed upon and are fully set forth in the pleadings, briefs and recorded statements of counsel.

After reading the pleadings and briefs, hearing the arguments, examining the exhibits and affidavits, and studying numerous authorities, I have concluded that the relief sought in these three cases must be denied and the bills of complaint therein dismissed.

I will try and state my reasons for this decision.

This Court can take judicial notice of the following facts and conditions and matters of general knowledge:

(1) There has long been growing opposition to fish traps in Alaska, and plebicites held in the Territory in connection therewith have resulted overwhelmingly in votes for the abolishment of traps.

(2) The three Indian villages here concerned as plaintiffs in these actions had voted overwhelmingly for the abolishment of traps.

(3) The salmon runs in Alaska are being rapidly depleted.

(4) The use of fish traps takes great numbers of fish from Alaskan waters for the benefit of the few who own or control the traps.

(5) Even with trap operations, many canneries have been compelled to close in Alaska in recent years, because of lack of an adequate fish supply.

(6) Traps were reduced over the years in number and curtailed in operation, and finally abolished by the state, the well-known purpose of which was to conserve the salmon supply for the benefit of all of the people of the state as a whole.

[fol. 186] (7) Financial loss occurred to some who owned or controlled the traps each time they were cut in number or limited in operation.

I find the following statements of the law determinative of the issues in this case. The state owns the tidelands and controls all areas wherein traps were threatened to be installed. In other words, the proposed trap sites are located in inland waters over which the State of Alaska has dominion.

Mr. Justice Reed, in *Alabama* v. *Texas et al.*, 347 U.S. 272 at page 275, stated:

> If the marginal lands were thus declared by the *California* and following cases to belong to the United States, they were ceded to the states through the subsequent Submerged Land Act of 1953 by the clause: 'Title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters . . . are hereby . . . recognized, confirmed, established, and vested in and assigned to the respective States . . .' Sec. 3(a). If, on the other hand, the marginal lands were not declared by those cases to belong to the United States, title to them remained in the respective states. Either by original ownership or by the cession of the

Act, the lands are now the property of the respective states . . .

The new State of Alaska is entitled to such powers as have been given to all states by the Submerged Lands Act.

Indian fishing rights do not include the right to fish with forbidden gear or in a manner prohibited to other citizens of the state.

No property right exists in fish traps and their use has been legally prohibited in the state.

The "equal footing" clause has long been held to refer to political rights and to sovereignty and to have a direct effect on certain property rights, and the question arose early in controversies between the states and the federal government as to ownership of the shores of navigable waters, and it was held that to deny to the states, admitted subsequent to the formation of the Union, ownership of this property, would deny them admission on an equal [fol. 187] footing with the original states. *Pollard's Lessee* v. *Hagan*, 44 U.S. 212, 228-229 and cases cited.

Upon the admission of a state to the Union the title of the United States to lands underlying navigable waters within the state passes to it as incident to the transfer to the state of local sovereignty and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce. *United States* v. *Oregon*, 295 U.S. 1, 14.

The lands on which the fish traps are to be moored are tidelands or lands underlying inland waters, and subject to the authority of the state to regulate fishing.

Of course the United States has responsibility under laws passed by Congress toward the Indians. The United States has made treaties—solemn pacts with Indian nations. Indians have been accorded rights by the United States in Territories and in lands controlled by the United States, but many of these rights disappear when a new state is formed. *Ward* v. *Race Horse*, 163 U.S. 504. In this case, on page 514, Mr. Justice White stated as follows:

> * * * It may be further, for the sake of the argument, conceded that where there are rights created by Con-

> gress, during the existence of a Territory, which are of such a nature as to imply their perpetuity, and the consequent purpose of Congress to continue them in the State, after its admission, such continuation will, as a matter of construction, be upheld, although the enabling act does not expressly so direct. Here the nature of the right created gives rise to no such implication of continuance, since, by its terms, it shows that the burden imposed on the Territory was essentially perishable and intended to be of a limited duration. * * *

See also *Kennedy* v. *Becker*, 241 U.S. 556; *U. S.* v. *Winans*, 198 U.S. 371 (384). An Indian reservation created by executive order of the President conveys no right of use or occupancy beyond the pleasure of Congress and the President.

When an Indian reservation is established by treaty the right of use or occupancy depends upon the language or the purpose expressed therein.

Congress has power to make a reservation inclusive of the adjacent waters and submerged lands as well as up- [fol. 188] lands * * *. The reservation thus created is not a private grant but simply a setting apart until otherwise provided by law.

Statutes passed for the benefit of dependent Indian tribes or communities are to be liberally construed, doubtful expressions being resolved in favor of the Indians. (See *Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78, pages 87 and 89.)

The reservation of the Metlakatla Indians was created at the will of Congress and did not constitute final disposal of the lands underlying the navigable waters. The extension of the 3,000 feet to include exclusive fishing rights by the President likewise did not constitute final disposal but only a grant until otherwise provided by law. The federal government retained jurisdiction thereof until Alaska became a state but upon achieving statehood, dominion and sovereignty thereof passed to the new state, subject only to the authority of the federal government in regulating navigation and commerce. *Pollard's Lessee*

v. *Hagan*, 44 U.S. 212. The presidential order which extended the exclusive fishing rights 3,000 feet offshore simply prohibited others from fishing therein and cannot be construed to permit the use of traps therein when prohibited by state law.

Under territorial status the Annette Island natives could not claim any vested property right in any particular method or means for taking fish. Their authority to operate a fishery at all came from the Secretary of the Interior under the provisions of the White Act.

The state regulates and controls wildlife resources and fisheries in the marginal sea. This was originally based on a concept of ownership. (*McCready* v. *Virginia*, 94 U.S. 391). This theory has to some extent been repudiated and the modern concept contemplates that state control is founded upon the power to regulate in the state the protection of these resources for all the people.

The state has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people. *Geer* v. *Connecticut*, 161 U.S. 519. See also

Skiriotes v. *Florida*, 313 U.S. 69
[fol. 189] *Toomer* v. *Witsell*, 334 U.S. 385
Corsa v. *Tawes*, 149 Fed. Supp. 771

The right to control fisheries rests in the state in the absence of affirmative action of Congress. *Manchest* v. *Mass.*, 139 U.S. 240.

Fish and game are owned by the states, not as proprietors, but in their sovereign capacity as the representatives and for the benefit of all their people in common. *U. S.* v. *Shauver*, 214 Fed. 154.

The White Act, 48 U.S.C. Sec. 221, was passed by Congress to protect and conserve fisheries in Alaska. It was amended by Sec. 6 (e) of the Alaska Statehood Act, which contained the so-called Westland proviso. The constitution of the State of Alaska became effective simultaneously with the Statehood Act, and with it Ordinance Number Three, which for reasons therein stated, abolished the use of fish traps for the taking of salmon for commercial purposes in all the coastal waters of the state.

If the White Act is amended by Sec. 6 (e) and by Ordinance Number Three as interpreted by the Secretary of the Interior (*Ketchikan Packing Co.* v. *Seaton*, opinion filed May 14, 1959, United States Court of Appeals for the District of Columbia) then the White Act must prohibit the use of traps in Alaskan waters.

The *Ketchikan Packing* case holds that Congress intended the Secretary to be a trustee for both the federal government and the new state during the transition of administration from the federal to the state authorities in the broad national interest. It further held that the Secretary, in that unique capacity, could not reasonably disregard a valid law of Alaska existing on January 3, 1959, the effective date of the Alaska Statehood Act and the Alaska constitution, and Ordinance Number Three.

The authority conferred upon the Secretary by existing law, as above set forth, should not be permitted to impair the powers or rights of the new state which come from the status of statehood. To do otherwise would seem to impair the equal footing standing of the new state.

[fol. 190] The White Act is still in effect and is the Act from which the Secretary of the Interior derived his authority, and this Act specifically states that every such regulation made by the Secretary of the Interior shall be of general application within the particular area to which it applies and that no exclusive or several right of fishery shall be granted therein. Therefore the White Act forbids exclusive right of fishery. This was the holding in the case of *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86, at page 122:

> As Sec. 208.23 (r) with its exception in favor of the natives in possession of Karluk Reservation and their licensees is based upon Sec. 1 of the White Act, we think it clear that its proviso 'that no exclusive or several right of fishery shall be granted therein' applies to commercial fishing by natives equally with fishing companies, nonresidents of Alaska or other American citizens and so applies whether those natives are or are not residents on a reservation. We find nothing in the White Act that authorizes the Secretary of the Interior to grant reservation occupants the privilege of exclusive commercial fishing rights. * * * The

> White Act fishing preserves were not intended to furnish a monopoly to a favored few. * * *

There are many cases besides those which I have mentioned which have been cited by counsel in their briefs and arguments which support the conclusions here reached, that the Secretary of the Interior is without authority to except the fish traps of the plaintiffs from his Order dated March 7, 1959, 24 Fed. Reg. 2053-71, prohibiting the use of fish traps in Alaskan waters effective April 18, 1959; and that the State of Alaska has authority to prohibit all fish traps in Alaskan waters, including those of the plaintiffs, and the plaintiffs are not entitled to the relief here sought.

Findings of Fact, if desired, may be presented, together with Judgment and Decree in accordance with this opinion.

Raymond J. Kelly, U. S. District Judge.

[fol. 191]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action No. 8063-A

ORGANIZED VILLAGE OF KAKE, Plaintiff,

—v.—

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

Civil Action No. 8064-A

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

—v.—

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

Civil Action No. 8066-A

—and—

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLANDS RESERVE, a federally chartered corporation, Plaintiff,

—v.—

WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, Defendants.

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL

Come Now the parties above named by their counsel, R. L. Jernberg, C. L. Cloudy, and R. H. Ziegler, and move the Court for an order granting said parties the preliminary injunction pending appeal of said cases to the United States Supreme Court.

[fol. 192] Dated at Juneau, Alaska, this 2nd day of July, 1959.

R. L. Jernberg, C. L. Cloudy, R. H. Ziegler, By R. L. Jernberg, Of Counsel for Plaintiffs.

ORDER

The above-entitled motion having duly come on for hearing before the Court the 2nd day of July, 1959, and the Court being fully advised in the premises, does order that said motion be and the same is hereby denied.

Done in open court the second day of July, 1959.

Raymond J. Kelly, District Judge.

[fol. 193]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

SUPPLEMENTAL FINDINGS OF FACT No. 1

The waters of the Alexander Archipelago, State of Alaska, which lie to the landward of a line drawn from

Cape Spencer lighthouse at the entrance of Cross Sound, and following generally the sinuosities of the coast, that is, the meander line of mean low water, and bridging headlands and bays as the line is drawn in a general southeasterly direction past Cape Bartholomew, Cape Muzon, and eastward through Cape Chacon and ending at a line drawn from the northermost extremity of Pt. Mansfield, Sitklan Island, 040° true, to where it intersects the mainland, as more particularly described in 33 C.F.R. 82,275, are all inland waters and historic bodies of water. Because of historic, social, and geographic considerations, of which this court takes judicial notice, and based also on a consideration of the record in this case, I find:

That geographically and geologically the Alexander Archipelago is part of a long mountain range which extends from the southern tip of the so-called Panhandle of Alaska's general land mass in a northwesterly direction, and includes the St. Elias Mountains, the Wrangell Mountains, and the Talkeetna Mountains in Southcentral Alaska;

That the main mass of igneous rocks which intruded the older sediments forms the core of this general land mass. The resulting topography, formed by erosion of the complex fault patterns and contacts between different rock types, and a later partial inundation, is a series of long, narrow arms of the sea, which have encroached upon the general land mass without actually altering its original coastline facing the open sea;

That the general land mass of the Alexander Archipelago retains its mountain-range character with elevations ranging from 2,000 to 6,000 feet, and that the present arms of the sea were at one time river valleys which have been eroded by glacial action, creating the long, narrow fiords which exist today as inland waterways, the only substantial means of surface transportation throughout the Archipelago.

[fol. 194] That the historical economy of the area involved is primarily oriented to a marine way of life in which the inland waters furnish the primary, and in many areas, the only industry. Said waters are in every respect a necessary and intimate part and parcel of the territory of the State of Alaska.

SUPPLEMENTAL FINDINGS OF FACT No. 2

Although plaintiff may suffer some loss if the right to fish by means of fish traps is denied, still I find that the damages alleged are to a large extent speculative in nature because of (1) the limited predictability of the salmon runs, (2) the existence of an independent fleet of seine boats with whom plaintiffs are free to bid for their catch on the basis of the price offered therefor, and (3) the possibility of increased catches by plaintiffs' own seine boats resulting from the abolition of fish traps.

SUPPLEMENTAL FINDINGS OF FACT No. 3

The Court judicially notices that fish traps, whether of the floating or pile-driven variety, are customarily affixed to the shoreline with the remainder necessarily extending out over tidelands and beyond into the navigable waters below the meander line of mean low tide.

[fol. 195]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

No. 8066-A

In the matter of the

METLAKATLA INDIAN COMMUNITY, Plaintiff,

—vs.—

WILLIAM A. EGAN, Defendant.

ORDER FOR DISMISSAL

This Matter having come on before the Court for final hearing on plaintiff's complaint for a permanent injunction on the 29th day of June, 1959; plaintiff appearing through its counsel, Robert H. Ziegler, and defendant appearing through its counsel, the Attorney General for the State of Alaska, and the Court having heard oral argument and having rendered its opinion, which opinion with supplemental

findings of fact is in lieu of findings of fact and conclusions of law,

It Is Therefore Ordered, Adjudged and Decreed that the complaint of the plaintiff be and it hereby is dismissed with prejudice.

Witness my hand and seal of this honorable Court this 2nd day of July, 1959.

Raymond J. Kelly, District Judge.

[fol. 212]

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER ONE AT JUNEAU

Civil Action No. 8063

ORGANIZED VILLAGE OF KAKE, Plaintiff,

—v.—

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

Civil Action No. 8064

ANGOON COMMUNITY ASSOCIATION, Plaintiff,

—v.—

WILLIAM A. EGAN, Governor of the State of Alaska, Defendant.

AFFIDAVIT OF LT. E. L. MAYFIELD

United States of America)
) ss:
State of Alaska)

I, Lt. E. L. Mayfield, being first duly sworn on oath depose and say:

That I am Lt. E. L. Mayfield, the Officer in charge of the First Division of the Department of State Police; and that on June 15th, 1959, I was assigned to the duty of supervising Officers in the assignment of patrolling the area of Kake with reference to the enforcement of the Alaska Laws pertaining to fish traps;

That during the course of the following events I was present during the mooring of a fish trap identified by writing on the trap "Organized Village of Kake", Point Pybus, Fish and Wild Life, #216. At 12:55 P.M., June 17th, 1959, at a location of Point Pybus I observed the above-described fish trap being towed into location with the tail-hold secured on shore. This trap was being towed by a tug named the Snowmist, on the port side, and a power scow named Jo-G on the star board side. A rigging scow named the Iron [fol. 213] Mike was against the shore at a point about 100 yards or less from the place where a sign had been posted prohibiting the erection of fish traps. At 1:30 P.M. it appeared that the trap was in position and was being held there by a tight tow line to the Snowmist. The Jo-G was underway with the scow, Iron Mike. From 1:30 P.M. until 4:43 P.M. I observed seven anchors being attached to the trap and pulled out in several directions and dropped. This was being done by the Jo-G and the Iron Mike, with the Snowmist still holding a tight line on his tow. This operation was accomplished by the three above-named boats and 15 individuals, 3 of which were natives and gave their residence as Kake, Alaska. The remainder were white men and gave their residence as the State of Washington.

During the mooring of the fish trap, the boat called Leif, arrived and stood by until the last anchor was dropped and then pulled up along the side of the trap and anchored. Aboard the Leif were 2 white men. One identified his residence as Ketchikan, Alaska, and the other as the State of Washington.

Further affiant sayeth not.

Lieut. E. L. Mayfield

Subscribed and Sworn to before me this 29th day of June, 1959.

Helen T. Monsen, Notary Public in and for Alaska,
My Commission Expires: 5/2/1962.

[fol. 215]

Appendix No. 4

In the District Court for the District of Alaska

Division Number One at Juneau

Affidavit of Phil R. Holdsworth

United States of America)
) ss:
State of Alaska)

Phil R. Holdsworth, being first duly sworn, deposes and says:

That he is Commissioner of Natural Resources for the State of Alaska and holds a Bachelor of Science degree in Mining Engineering and Geology.

That he has been active in the mining industry in Alaska, and has intimate knowledge of land and water conditions in Southeastern Alaska based upon thirty years of residence within the State.

That in connection with mining and land activities, he has covered much of the Alexander Archipelago on foot and by air.

That geographically and geologically the Alexander Archipelago is part of a long mountain range which extends from the southern tip of the so-called Panhandle of Alaska's general land mass in a northwesterly direction, and includes the St. Elias Mountains, the Wrangell Mountains, and the Talkeetna Mountains in South-central Alaska.

That the main mass of igneous rocks which intruded the older sediments forms the core of this general land mass. The resulting topography, formed by erosion of the complex fault patterns and contacts between different rock types, and a later partial inundation, is a series of long, narrow arms of the sea, which have encroached upon the general land mass without actually altering its original coastline facing the open sea.

That the general land mass of the Alexander Archipelago retains its mountain range character with elevations rang-

ing from 2,000 to 6,000 feet, and that the present arms of the sea were at one time river valleys which have been eroded by glacial action creating the long, narrow fiords which exist today as inland waterways, the only means of transportation throughout the Archipelago.

That two official maps published by the U. S. Geological Survey, Department of the Interior, are submitted in sup- [fol. 216] port of the above statements and are attached as Exhibits A and B.

Exhibit A. Map I-84 Miscellaneous Geologic Investigations—Mesozoic and Cenozoic Tectonic Elements of Alaska by Thomas G. Payne, 1955.

Exhibit B. Geologic Map of Alaska compiled by J. Thomas Dutro, Jr. and Thomas G. Payne, 1957.

That Exhibit A clearly shows that the Prince of Wales Geanticline, which is the Alexander Archipelago, is an extension of, and is identical with the Talkeetna Geanticline which includes the St. Elias, Wrangell, and Talkeetna Mountains.

That Exhibit B confirms the above by showing that the age and pattern of the various rock types are similar along this continuous range of mountains extending through the general land mass of Alaska from Dixon Entrance on the southeast to Bristol Bay on the southwest.

Dated this 28th day of June, 1959.

/s/ PHIL R. HOLDSWORTH
Phil R. Holdsworth

Subscribed and sworn to before me this 28th day of June, 1959.

/s/ CATHRYN C. MACK
Notary Public for Alaska

Notary Public for the State of Alaska
My Commission Expires May 12, 1963

(Notary Public Seal)

[fol. 217]

Appendix No. 5

In the District Court for the District of Alaska

Division Number One at Juneau

Affidavit

United States of America,)
) ss:
State of Alaska,)

James A. Williams, being first duly sworn upon his oath, deposes and says:

That he is a state mining engineer employed in the Department of Natural Resources, Division of Mines and Minerals;

That he has been employed as a mining engineer by the Territory, now State of Alaska for nine years;

That he is a graduate of the University of Alaska and holds degrees in mining engineering and geological engineering;

That he has completed a land mass and water mass survey of the entire Southeastern Panhandle from its southern most portion northward to a line drawn from a point on the sea coast, which point is due west of Mt. Fairweather;

That the island mass of Alexander Archipelago computed under this survey totals 14,400 square miles, more or less;

That the mainland land area totals 16,600 square miles, more or less;

That the total water mass of the area measured totals 7,500 to 8,000 square miles, more or less;

That the total area of Southeastern Alaska including land and water measures 38,500 square miles, more or less;

That from the foregoing figures he concludes that approximately 19 per cent of the total area of the Southeastern Alaska Panhandle comprises water.

/s/ James A. Williams
James A. Williams

Subscribed and sworn to before me this 29th day of June, 1959.

/s/ Helen T. Monsen
Notary Public in and for Alaska,
My Commission Expires: May 2, 1962.

(Notary Public Seal)

[fol. 218]

Appendix No. 6

In the District Court for the District of Alaska

Division Number One at Juneau

United States of America,)
) ss:
State of Alaska,)

Edward L. Keithahn, being first duly sworn on oath, deposes and says:

That he is Curator and Librarian in the Alaskan Museum and Library in Juneau, Alaska, and has served as such since 1941;

That he is a graduate of the University of Washington and holds a Bachelor's Degree in General Studies;

That he has published various professional papers dealing with aspects of Alaskan History and Ethnology;

That he is well acquainted with the geography of Southeastern Alaska, more commonly known as the Alaskan Panhandle, having lived in Southeastern Alaska for 31 years;

That through his intimate acquaintance with Alaskan history he states that the waters of the Alexander Archipelago from Dixon Entrance to Cape Spencer are waters over which first Russia, then the United States have exer-

cised sovereignty which has not been successfully challenged for over 100 years;

That the exercise of such sovereignty first by Russia and subsequently by Alaska and the United States over said lands and waters, as well as the historic background of the area have led to the conclusion that the said waters are historic bodies of water and inland waters of Alaska.

/s/ Edward L. Keithahn
Edward L. Keithahn

Subscribed and sworn to before me this 29th day of June, 1959.

/s/ Helen T. Monsen
Notary Public in and for Alaska,
My Commission Expires: May 2, 1962.

(Notary Public Seal)

[fol. 219]

Supreme Court of the United States

Nos. 326 and 327, October Term, 1959.

Metlakatla Indian Community, Annette Island Reserve, Appellant,

vs.

Egan, Governor of Alaska, et al., and
Organized Village of Kake et al., Appellants,

vs.

Egan, Governor of Alaska.

Order Postponing Jurisdiction—December 7, 1959

Appeals from the District Court of the State of Alaska.

The statements of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the cases on the merits. The cases are consolidated and a total of three hours is allowed for oral argument.

[fol. 221]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1959

No. 326

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, a Federally Chartered Corporation, Appellant,

v.

WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, Appellees.

APPELLANT'S DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed December 28, 1959

Appellant designates the following portions of the record herein for printing by the Clerk of this Court:

1. Notice of Appeal: R. 1-5
2. Complaint and affidavits, including schedules: R. 6-37
3. Motion for Preliminary Injunction: R. 38-40
4. Motion to Dismiss: R. 41-42
5. Extract of Transcript: R. 179-181
6. Extract of Transcript: R. 182
7. District Court Opinion: R. 183-190
8. Motion for Injunction Pending Appeal and Order: R. 191-192
9. Supplemental Findings: R. 193-194
10. Order of Dismissal: R. 195
11. This designation and proof of service.

Richard Schifter, Counsel for Appellant.

Dated: December 28, 1959

[fol. 222] Proof of Service (omitted in printing).